Calendar No. 957

100TH CONGRESS
2d Session

SENATE

REPORT
100-522

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT OF 1988

SEPTEMBER 22 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1272]

The Committee on Energy and Natural Resources to which was referred the bill (S. 1272) to withdraw certain public lands in Eddy County, New Mexico, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Waste Isolation Pilot Plant Land Withdrawal Act of 1988".

SEC. 2. DEFINITIONS.

As used in this Act the term:

(1) "Administrator" means the Administrator of the Environmental Protection Agency.

(2) "Agreement for Consultation and Cooperation" means the July 1, 1981 "Agreement for Consultation and Cooperation", as amended by the November 30, 1984 "First Modification", and the August 4, 1987 "Second Modification" or as it is amended after the date of enactment of this Act, between the State of New Mexico and the United States Department of Energy authorized by section 213(b) of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164; 93 Stat. 1265).

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(3) "EEG" or "Environmental Evaluation Group" means the scientific evaluation group for the Waste Isolation Pilot Plant established pursuant to Section 17.

(4) "Secretary" means the Secretary of Energy.

(5) "WIPP" or "Waste Isolation Pilot Plant" means that project authorized under section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (P.L. 96-164; 93 Stat. 1265).

SEC. 3. MISSION OF THE WIPP.

(a) PURPOSE.—The purpose of the WIPP is to receive, handle, and permanently dispose of defense transuranic waste.

(b) CAPACITY.—The transuranic waste capacity of the WIPP is 6.2 million cubic feet by volume.

(c) RETRIEVABILITY.—The transuranic waste will be retrievable prior to permanent disposal.

(d) DEFENSE REMOTE-HANDLED TRANSURANIC WASTE.—No defense remote-handled transuranic waste (RH-TRU) with a surface dose rate in excess of 1,000 rem per hour will be shipped to the WIPP and no more than five percent of the total volume of 250,000 cubic feet (or 12,500 cubic feet maximum) of defense RH-TRU shipped to the WIPP will exceed 100 rem per hour surface dose rate. Defense RH-TRU shipped to the WIPP will not exceed the 23 curies per liter maximum activity level (averaged over the volume of the canister). The total curies of defense RH-TRU shipped to the WIPP shall not exceed 5,100,000 curies.

(e) PLANT NOT FOR HIGH-LEVEL RADIOACTIVE WASTE.—The WIPP is not designed for the permanent disposal of high-level radioactive waste, nor has the WIPP site itself been characterized for such permanent disposal.

SEC. 4. PUBLIC LAW 96-164.

This Act shall be deemed to amend section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164; 93 Stat. 1265).

SEC. 5. AGREEMENT FOR CONSULTATION AND COOPERATION.

To the extent that the Agreement for Consultation and Cooperation is not inconsistent with this Act, nothing in this Act shall affect such Agreement, except that the Agreement may be amended to be consistent with this Act. Within one year of enactment of this Act, to the extent that the agreement is in conflict with this Act, the Agreement shall be amended to remove such conflict. If the Agreement is not so amended, this Act shall apply with respect to the items in conflict.

SEC. 6. WITHDRAWAL AND RESERVATION FOR THE WIPP.

(a) Withdrawal, Jurisdiction, and Reservation.—(1) Subject to valid existing rights and except as otherwise provided in this Act, the lands described in subsection (c) are hereby withdrawn from all forms of entry, appropriation and disposal under the public land laws (including the mineral leasing laws and the geothermal leasing laws), and from location, entry, and patent under the mining laws. Such lands and resources shall be known as the "Waste Isolation Pilot Plant Withdrawal" (hereafter in this Act referred to as the "Witthdrawal").

(2) Except as otherwise provided in section 10(d)(3), jurisdiction over the Withdrawal is hereby permanently transferred from the Secretary of the Interior to the Secretary of Energy. The Withdrawal is reserved for the use of the Secretary of Energy for the construction, operation, repair and maintenance, shutdown, monitoring, postdecommissioning control, and other authorized activities associated with, and limited by, the mission of the WIPP.

(b) Revocation of Public Land Orders.—Public Land Order 6232, of March 23, 1982, Public Land Order 6403, of June 29, 1983, and the memorandum of understanding referenced in each of those orders, are revoked in their entirety.

(c) Land Description.—

(1) The boundaries depicted on the map issued by the Bureau of Land Management of the Department of the Interior, entitled "Waste Isolation Pilot Plant Proposed", dated March 1986, are hereby established as the boundaries of the Withdrawal.

(2) Within 30 days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the lands withdrawn and reserved by this Act; and

(B) file copies of the map and the legal description of the lands referred to in paragraph (1) with the Committee on Energy and Natural Resources of

the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives, the Secretary of Energy, and the State of New Mexico.

(d) Technical Corrections.—The map and legal description referred to in subsection (c) shall be the same force and effect as if they were included in this Act, except that the Secretary of the Interior may correct clerical and typographical errors in such map and legal description.

(e) Water Rights.—Nothing in this Act shall be construed to establish a reservation to the United States with respect to any water or water right on the Withdrawal. Nothing in this Act shall be construed as authorizing the appropriation of water on the Withdrawal by the United States after the date of enactment of this Act, except in accordance with the law of the State of New Mexico. This subsection shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 7. ESTABLISHMENT OF MANAGEMENT RESPONSIBILITIES.

(a) General Authority.—The Secretary of Energy shall be responsible for the management of the Withdrawal and shall consult and cooperate with the State of New Mexico in discharging those responsibilities as well as any other responsibility required by this Act.

(b) Management Plan.—(1)(A) Within one year after enactment of this Act, the Secretary, in consultation with the State of New Mexico, shall develop a management plan for the Withdrawal.

(B) Any use of such lands for activities not associated with the WIPP shall be subject to such conditions and restrictions as may be necessary to permit the use of such lands for WIPP activities.

(2) In addition to other uses, the management plan shall provide for domestic livestock grazing, hunting and trapping, maintenance of wildlife habitat, the disposal of salt tailings remaining on the surface, and mining, in accordance with the following:

(A) Grazing.—The Secretary shall permit grazing to continue where established prior to the date of enactment of this Act subject to such reasonable regulations, policies, and practices as the Secretary determines necessary or appropriate. Such grazing shall be in accordance with title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.), the Act entitled "An Act to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize their livestock industry dependent upon the public range, and for other purposes", approved June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), and Executive Order 12548 (51 Fed. Reg. 5985).

(B) Hunting and Trapping.—The Secretary shall permit hunting and trapping within the Withdrawal in accordance with applicable laws and regulations of the United States and the State of New Mexico, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where and establishing periods when no hunting or trapping is permitted for reasons of public safety, administration, or public use and enjoyment.

(C) Wildlife Habitat.—In order to preserve the wildlife of the Withdrawal, the Secretary shall manage such Withdrawal so as to maintain the wildlife habitat, subject to the mission of the WIPP.

(D) Salt Trailings.—Notwithstanding any other provision of law, the Secretary shall dispose of salt tailings that are extracted from the Withdrawal and that are not needed for backfill at the WIPP. Disposition shall be made in accordance with sections 2 and 3 of the Act of July 31, 1947, as amended (61 Stat. 681; 30 U.S.C. 602, 603; commonly referred to as the "Materials Act of 1947").

(E) Mining.—No surface or subsurface mining unrelated to the mission of the WIPP, including slant drilling under the Withdrawal from within or without the Withdrawal, shall be permitted on or under the Withdrawal, including after decommissioning.

(c) Closure to the Public.—If the Secretary determines that the health and safety of the public or the common defense and security require the closure to public use of any road, trail, or other portion of the Withdrawal, the Secretary may take such action as the Secretary determines to be necessary or desirable to effect and maintain such closure.

(d) Cooperative Agreements.—The Secretary may enter into cooperative agreements—

(1) with the Secretary of the Interior and the State of New Mexico for the administration of grazing within the Withdrawal; and

(2) with the State of New Mexico for the maintenance of the wildlife habitat of the Withdrawal.

(e) SUBMISSION OF PLAN.—Within one year after the date of enactment of this Act, the Secretary shall submit the management plan developed pursuant to subsection (b) to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, and the State of New Mexico. Any amendments to such plan shall be submitted promptly to such Committees and the State of New Mexico.

SEC. 8. EXPERIMENTAL PROGRAM PLAN.

(a) PREPARATION OF PLAN.—No later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the National Academy of Sciences, the EEG, the Governor of the State of New Mexico, and the Administrator, shall prepare a proposed experimental program plan for the WIPP. The plan shall include—

(1) experiments to determine the rate of brine seepage and gas generation at the WIPP and to evaluate the impact of such brine seepage and gas generation on the WIPP;

(2) experiments to demonstrate compliance with the environmental standards for disposal of transuranic radioactive wastes established pursuant to section 11;

(3) testing with transuranic radioactive waste packages to demonstrate operations for handling and transporting transuranic waste at the WIPP: and

(4) such other experiments as are determined by the Secretary, in consultation with the National Academy of Sciences, the Administrator, the Governor of the State of New Mexico, and the EEG, to be necessary to assure the protection of the health and safety of the public.

(b) REVIEW OF PLAN.—(1) The Secretary shall submit the experimental program plan required under subsection (a) to the EEG. Such plan shall include a description of any experiments that would involve the use of radioactive waste.

(2) Within 60 days after the submission of such plan the EEG shall notify the Secretary of its agreement or disagreement with the plan. The disagreement of the EEG shall be based on a finding that the planned activities—

(A) are not in accordance with the requirements of subsection (a), or

(B) pose undue risks to the health and safety of the public.

(3) If the EEG disagrees with the plan, the provisions, of section 16 shall apply and no radioactive waste may be received at the WIPP until the decision of the Secretary is implemented pursuant to section 16(k), the matter is withdrawn pursuant to section 16(l), or the Secretary authorizes the receipt of radioactive waste pursuant to section 16(j).

SEC. 9. ONGOING REVIEW.

(a) ONGOING REVIEW.—

(1) The Secretary shall provide to the EEG for its review and comment all relevant data, reports, and other material concerning the experimental program plan required pursuant to section 8(a) and the implementation of such plan.

(2) The EEG may review and comment on other activities at the WIPP that affect the health and safety of the public.

(3) The EEG may submit its comments under paragraph (1) and (2) to the State of New Mexico, the National Academy of Sciences, the Administrator, the Committee on Energy and Natural Resources of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives. The comments of the EEG shall also be made available to the public.

(b) TECHNICAL REVIEW.—The Secretary shall promptly submit the experimental program plan required under section 8(a), the proposed plan for the retrievability demonstration required under section 10(b), and periodic reports on the progress of the WIPP to the Governor of the State of New Mexico and the National Academy of Sciences for technical review of the adequacy and appropriateness of scientific experimental or research designs and data bases.

SEC. 10. COMPLIANCE WITH EPA STANDARDS.

(a) COMPLIANCE WITH EPA STANDARDS.—(1) On and after the date of enactment of this Act, the Secretary shall, with respect to the WIPP, be subject to the standards of the Environmental Protection Agency set forth in "Environmental Standards of the Environmental Protection Agency for Management and Storage" (40 C.F.R. 191, subpart A), as such standards are in effect on the date of the enactment of this Act, or as amended after such date of enactment.

(2)(A) Prior to the permanent disposal of any radioactive waste at the WIPP, the Secretary shall, with respect to the WIPP, comply with the environmental stand-

ards for disposal of transuranic radioactive wastes established pursuant to either subsection (a)(2), (b), or (c) of section 11 and the Administrator shall concur that such standards have been complied with.

(B) The Secretary may request that the Administrator examine the Secretary's compliance with the standards established pursuant to section 11 with respect to the WIPP. The Administrator shall respond to any such report as promptly as is feasible and shall provide, within 6 months of such request, a written notice of the Secretary that the Administrator does or does not concur that such standards have been complied with. In the case that the Administrator does not concur under this subsection, the Administrator shall provide the Secretary with the basis for such nonconcurrence.

(b) ANNUAL DEMONSTRATION.—(1) Until such time as the Administrator concurs under subsection (a)(2) that the Secretary has complied with the standards established pursuant to either subsection (a)(2), (b), or (c) of section 11 with respect to the WIPP, the Secretary shall conduct an annual demonstration in accordance with paragraph (2) that all radioactive waste stored at the WIPP at the time of the demonstration can be readily retrieved.

(2)(A) At least 90 days before the demonstration under paragraph (1) takes place, the Secretary shall provide to the EEG a proposed plan for such demonstration and shall consult with the EEG to ensure that the demonstration will be properly instrumented and will not adversely affect the health and safety of the public.

(B) In order to demonstrate that all radioactive waste stored in the WIPP can be readily retrieved, the Secretary shall provide to the EEG a plan showing the location of all such waste and describing a feasible procedure for removal of the waste from the WIPP within a reasonable period of time. Upon request of the EEG, the Secretary shall physically remove a sample package of waste to an appropriate location on the surface at the WIPP.

(3)(A) Within 60 days after a demonstration under paragraph (1), the EEG shall provide written notice to the Secretary of any disagreement that such demonstration has met the requirements of subparagraph (2)(B).

(B) If at any time between the annual demonstrations of retrievability under paragraph (1) the EEG finds that the waste may not be retrievable under this subsection, the EEG shall provide written notice, including the basis for such finding, to the Secretary. The Secretary shall modify the demonstration plan to address any such findings in the next annual demonstration under this subsection.

(4) If EEG provides notice to the Secretary under paragraph (3)(A), the provisions of section 16 shall apply to resolve the disagreement over the retievability of radioactive waste at the WIPP, and no radioactive waste may be received at the WIPP until the decision of the Secretary is implemented under section 16(k), the notice is withdrawn under section 16(1), or the Secretary authorizes receipt of radioactive waste at the WIPP under section 16(j).

(c) LIMITATION ON RADIOACTIVE WASTE.—(1) Until the Administrator concurs under subsection (a)(2) that the Secretary has, with respect to the WIPP, complied with the environmental standards for disposal of transuranic radioactive wastes established pursuant to either subsection (a)(1), (b), or (c) of section 11, only as much radioactive waste as is called for in the experimental program plan required under section 8(a), and in no case more than three percent by volume of the capacity of the WIPP, may be received at the facility.

(2) After the Administrator concurs under subsection (a)(2) that the Secretary has complied with the environmental standards for disposal of transuranic radioactive wastes established pursuant to either subsection (a)(1), (b), or (c) of section 11 with respect to the WIPP, only as much radioactive waste as is called for in the experimental program plan required under section 8(a)(3), and in no case more than 15 percent by volume of the capacity of the WIPP, may be received at the facility until October 1, 1993.

(d) REMOVAL OF RADIOACTIVE WASTE UPON NONCOMPLIANCE.—(1) Except as otherwise provided in paragraph (2), if the Administrator finds that the environmental standards for disposal of transuranic radioactive wastes established pursuant to section 11 have not been complied with by October 1, 1993, the provisions of paragraph (3) shall take effect.

(2) If the Secretary notifies the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives that the environmental standards for disposal of transuranic radioactive wastes established pursuant to section 11, the provisions of paragraph (3) shall take effect on October 1, 1994, if the environmental standards for disposal of transuranic radioactive wastes established pursuant to sec-

tion 11 have not been complied with by that date. No additional radioactive waste may be received at the WIPP during such additional year except—

(A) radioactive waste identified in subsection (c); and

(B) radioactive waste in transit to the WIPP on October 1, 1993.

(3)(A) Except as provided in subparagraph (B), if the Administrator finds that the environmental standards for disposal of transuranic radioactive wastes established pursuant to section 11 have not been complied with by the date established in paragraph (1) or (2), as appropriate, the Secretary shall notify the Congress within 30 days and shall physically remove the waste as soon as possible and, after all radioactive waste has been removed and the WIPP has been decommissioned, the land withdrawal provided by this Act shall terminate and such land shall be transferred to the Secretary of the Interior for management by the Bureau of Land Management.

(B) If the Governor of the State of New Mexico and the Secretary, in consultation with the Administrator, agree that additional time is warranted in order to achieve compliance, the requirements of subparagraph (A) may be postponed for an appropriate period to time, not to exceed 12 months, as agreed to by the Governor and the Secretary. The Secretary shall notify the Congress of such postponement and the reasons therefor. If the Administrator finds that compliance has been achieved, he shall withdraw any earlier finding of noncompliance under subparagraph (a) and notify the Congress.

(e) ENGINEERED BARRIERS REQUIRED.—The WIPP shall use both engineered and natural barriers to isolate the radioactive waste after disposal to the extent required by the Environmental Protection Agency. The barriers shall include, as a minimum, properly designed backfill, plugs and seals in the shafts and drill-holes.

SEC. 11. ESTABLISHMENT OF EPA STANDARDS.

(a) PROMULGATION AND ISSUANCE OF EPA STANDARDS.—The Administrator shall, pursuant to authority under other provisions of law—

(1) promulgate in the Federal Register proposed environmental standards for disposal of transuranic radioactive wastes not later than 18 months after the date of enactment of this Act; and,

(2) issue in the Federal Register final environmental standards for disposal of transuranic radioactive wastes not later than three years after the date of enactment of this Act.

(b) COMPLIANCE WITH STANDARDS.—If the Administrator is ordered by a court of law to repromulgate or reissue the standards required under subsection (a) or is enjoined from implementing such standards or is otherwise prevented from giving such standards full force and effect by a court of law, the Secretary shall demonstrate compliance with the standards required under subsection (a) notwithstanding any court order to the contrary, unless such court order expressly finds and orders that its injunction relates to substantive health and safety aspects of such standards directly applicable to the WIPP.

(c) FAILURE TO PROMULGATE OR ISSUE.—If the Administrator fails to promulgate or issue in the Federal Register environmental standards for disposal of transuranic radioactive wastes required to be promulgated and issued pursuant to subsection (a), the Secretary shall demonstrate compliance with the environmental standards for the disposal of transuranic radioactive wastes as such regulations were in effect on November 19, 1985.

(d) COMPLIANCE WITH RCRA.—Notwithstanding any other provisions of the Resource Conservation and Recovery Act, including the Hazardous and Solid Waste Amendments of 1984 (hereafter referred to as "RCRA"), the Administrator shall assert primary authority over all matters pertaining to compliance at the WIPP with the RCRA until such time as the Administrator approves amendments to the State of New Mexico's hazardous waste program which would authorize the State to regulate mixed waste at the WIPP.

SEC. 12. BAN ON HIGH-LEVEL RADIOACTIVE WASTE EXPERIMENTS AT THE WIPP.

(a) BAN.—No high-level radioactive waste shall be brought to the WIPP for any purpose.

(b) REVOCATION OF AUTHORITY.—The authority of the Secretary to conduct high-level radioactive waste experiments at the WIPP pursuant to section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Public Law 96-164; 93 Stat. 1265) is hereby revoked.

SEC. 13. TRANSPORTATION.

(a) CONSTRUCTION AND UPGRADING OF HIGHWAYS.—There is hereby authorized to be appropriated for fiscal years beginning after September 30, 1988, $200,000 to

remain available until expended, for the construction or upgrading of certain highways in the State of New Mexico for the transportation of radioactive waste generated during defense-related activities, including those identified in an August 4, 1987 agreement between the State of New Mexico and the United States Department of Energy. Funds appropriated under this subsection may be used to reimburse the State of New Mexico for expenses incurred in the construction or upgrading of such roads prior to the date of the appropriation.

(b) EMERGENCY PREPAREDNESS.—(1) There is authorized to be appropriated to the Secretary such funds as are necessary to provide in-kind and cash assistance for emergency response-related activities to the State of New Mexico or any other State or Indian tribe through whose jurisdiction the Secretary plans to transport radioactive waste to or from the WIPP. Such technical assistance and funds shall be provided until the WIPP is decommissioned.

(2) Such assistance shall be for the purpose of training of public safety officials of the State of New Mexico or any other State, Indian tribe, or affected unit of local government through whose jurisdiction the Secretary plans to transport radioactive waste to or from the WIPP. Such training shall cover procedures required for safe routine transportation of such waste and procedures for dealing with emergency response situations.

(3) Such training shall commence within 30 days of enactment of this Act. No radioactive waste shall be transported to the WIPP unless and until the training has been offered.

(4) There is authorized to be appropriated to the Secretary such funds as are necessary to ensure, through monetary grants or contributions in-kind, that the State of New Mexico and other States and affected units of local government through whose jurisdiction the Secretary plans to transport radioactive waste to or from the WIPP possess the equipment necessary to respond to an accident involving waste being transported to or from the WIPP.

(c) PACKAGING.—No radioactive waste may be transported by or for the Secretary to or from the WIPP except in packages that have been certified for the transportation of radioactive wastes by the Nuclear Regulatory Commission. In certifying packages to transport transuranic radioactive waste, the Nuclear Regulatory Commission shall require actual tests on a sample full-scale package, in addition to simulated tests and computer analysis of hypothetical accident conditions.

(d) NOTIFICATION.—Prior to any transportation of radioactive waste by or for the Secretary to or from the WIPP, the Secretary shall abide by all applicable regulations of the Nuclear Regulatory Commission regarding advance notification of State and local governments and Indian tribes.

(e) PRIORITIES IN SHIPMENT.—(1) Until such time as the Administrator concurs under section 10(a)(2) that the Secretary has complied with the standards established pursuant to either subsection (a)(2), (b), or (c) of section 11, the Secretary shall transport radioactive waste certified for transportation to the WIPP currently stored at Idaho National Engineering Laboratory, Rocky Flats Plant, and the Savannah River Plant to the WIPP prior to transporting comparable radioactive waste from other facilities to the WIPP.

(2) No radioactive waste shall be shipped to the WIPP from Los Alamos National Laboratory unless and until all other sources of comparable radioactive waste certified for transportation to the WIPP have been exhausted.

(3) During such time as the WIPP is receiving transuranic radioactive waste for disposal, no waste shall be shipped from Rocky Flats to the Idaho National Engineering Laboratory for storage prior to shipment to the WIPP for disposal, except those wastes which require special examination involving the use of facilities at the Idaho National Engineering Laboratory.

(f) LIMITATION. —After compliance with the environmental standards for disposal of transuranic radioactive wastes established pursuant to either subsection (a)(2), (b), or (c) of section 11 has been demonstrated, the net annual increase in the amount (by volume) of transuranic radioactive waste received from the Rocky Flats Plant and stored at the Idaho National Engineering Laboratory shall not exceed zero.

SEC. 14. ECONOMIC ASSISTANCE.

(a) WIPP.—Related Business and Employment Opportunities.—To the maximum extent practicable, the Secretary shall continue to encourage business and employment opportunities related to the WIPP that may be conducive to the State of New Mexico, especially Lea and Eddy Counties, and report annually thereon to the State of New Mexico.

(b) OFFSET OF EXPENSES.—In order to offset expenses anticipated to be incurred by the State of New Mexico as a result of the location of the WIPP within the State,

the Secretary of the Interior shall pay out of the United States portion of the moneys described in section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (30 U.S.C. 191; commonly referred to as the "Mineral Leasing Act"), $10,091,233 for the fiscal year 1989 and each of the four subsequent fiscal years, adjusted annually after fiscal year 1988 in accordance with changes in the Consumer Price Index (published by the Bureau of Labor Statistics, Department of Labor), to the State of New Mexico to be used in accordance with such section. A payment under this section shall be in addition to any payment to the State of New Mexico under such section 35.

(c) IMPACT ASSISTANCE.—(1) In addition to the payments under subsection (b), there is authorized to be appropriated to the Secretary such sums as are necessary to provide financial and technical assistance to the State of New Mexico if the State of New Mexico requests such assistance. Such assistance shall be designed to assess, study, and mitigate the impact on the State of New Mexico of the development of the WIPP.

(2) If the State of New Mexico desires assistance under this subsection, it shall prepare, in consultation with units of local government, and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of the WIPP. As soon as practicable after the submission of such report, the Secretary shall seek to enter into a binding agreement with the State of New Mexico setting forth the amount of assistance to be provided to the State of New Mexico under this subsection and the procedures to be followed in providing such assistance. No less than 50 percent of the funds made available under this subsection shall be made available to units of local government in Lea and Eddy Counties.

(d) PAYMENTS EQUIVALENT TO TAXES.—There is authorized to be appropriated to the Secretary of Energy such sums as are necessary to provide a grant each fiscal year to the State of New Mexico and each unit of local government in which the Withdrawal is located. Such grants shall be equal to the amount the State of New Mexico and such units of local government, respectively, would receive were they authorized to tax the development and operation of the WIPP, as the State of New Mexico and such units of local government tax the other real property and industrial activities occurring within the State of New Mexico and such units of local government. Such grants shall continue until such time as all such development and operation are terminated at such site.

SEC. 15. DECOMMISSIONING OF WIPP.

(a) PLAN FOR ENVIRONMENTAL CONTROLS AFTER DECOMMISSIONING.—No later than five years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States House of Representatives, the State of New Mexico, the Administrator, and the EEG a plan for managing the WIPP after decommissioning. In addition to activities required pursuant to the Supplemental Stipulated Agreement of December 27, 1982 between the Department of Energy and the State of New Mexico, the plan shall be consistent with the environmental standards for disposal of transuranic radioactive wastes established pursunt to section 11 as such standards are applicable to the WIPP at the time the plan is prepared. The Secretary shall consult and cooperate with the State of New Mexico in the preparation of such plan.

(b) MANAGEMENT PLAN FOR THE WITHDRAWAL AFTER DECOMMISSIONING.—Within five years after the date of enactment of this Act, the Secretary shall publish in the Federal Register a plan for the management and use of the withdrawal following the decommissioning of the WIPP. The Secretary shall consult and cooperate with the State of New Mexico and the EEG in the preparation of such plan.

SEC. 16. CONFLICT RESOLUTION.

(a) INITIATION OF PROCESS UPON DISAGREEMENT.—In the event that the EEG disagrees with the experimental program plan pursuant to section 8(b) or the retrievability demonstration pursuant to section 10(b), the Director of the EEG shall immediately notify the Secretary. The Director of the EEG and the Manager of the Albuquerque Operations Office of the Department of Energy (hereafter in this section referred to as the "Manager") shall meet to discuss the matter in detail. Within 5 calendar days after the initiation of such discussion, the Manager shall advise the EEG in writing what action, if any, is contemplated with respect to the EEG's disagreement. If the disagreement is not resolved by the written determination of the Manager, the Director of the EEG, after consultation with the Governor of the State of New Mexico, shall notify the Secretary in writing within ten calendar days of receipt of such determination that the EEG intends to invoke the provisions of this

section and the reasons therefor. A copy of this notification shall be furnished to the Manager and the Governor of the State of New Mexico.

(b) CONFLICT RESOLUTION HEARING OFFICER.—Within 15 days after notification under subsection (a), the Director of the EEG and the Manager shall appoint one mutually agreed upon recognized, independent expert in the particular field involved as the conflict resolution hearing officer. The conflect resolution hearing officer may employ as many experts in the particular field or fields involved and support staff as the conflict resolution hearing officer shall determine are necessary to assist in making a recommendation or recommendations on the matter before the conflict resolution hearing officer.

(c) SUBMISSION OF WRITTEN STATEMENTS.—Within 15 days after the appointment of the conflict resolution hearing officer, the Director of the EEG, the Governor of the State of New Mexico, and the Manager shall each submit to the conflict resolution hearing officer a written statement of their respective positions and the basis therefor. The conflict resolution hearing officer may hear oral presentations by the EEG, the Manager, and the Governor of the State of New Mexico during the 15-day time period specified under this subsection.

(d) EXTENTION.—The conflict resolution hearing officer may grant, upon the request of the Director of the EEG, the Manager, or the Governor of the State of New Mexico, a reasonable extension, not to exceed 10 days, of the time limit set forth is subsection (c) for good cause, such as recourse to the advice of outside experts in the particular field or fields involved in the matter before the conflict resolution hearing officer.

(e) RECORD OF SUBMISSIONS.—The conflict resolution hearing officer shall compile and maintain an accurate record of all written submissions and a transcript of any oral presentations made pursuant to subsection (c).

(f) RECOMMENDATIONS BY HEARING OFFICER.—The conflict resolution hearing officer shall consider all written submissions and oral presentation in the record and transcript required by subsection (e) and shall make written recommendations on the matter or matters before him which shall refer to the specific facts in that record relied upon by him. The responsibility for making written recommendations under this subsection shall not be delegated by the conflict resolution hearing officer.

(g) SUBMISSION OF RECOMMENDATIONS.—The conflict resolution hearing officer shall transmit his written recommendations along with a copy of the record and transcript to the Secretary, the EEG, the Manager, and the Governor of the State of New Mexico within 15 calendar days following the receipt of all written submissions and oral presentations authorized by subsection (c).

(h) COMMENTS FROM PARTIES.—Within 5 calendar days following receipt of the written recommendations of the conflict resolution hearing officer and the record and transcript, the EEG, the Manager, and the Governor of the State of New Mexico, may submit their own written comments and recommendations to the Secretary which shall be made a part of the record required by subsection (e). An information copy of any such comments and recommendations by either party shall be transmitted to all other parties.

(i) DECISION BY SECRETARY.—Within 15 calendar days following receipt of the written recommendations of the conflict resolution hearing officer and the record and transcript, the Secretary shall issue a written decision on the matter or matters before him which shall include the basis in the record for such decision and shall constitute final agency action on and resolution of the matter or matters. The issuance of a decision under this subsection may not be delegated by the Secretary. Copies of the decision shall be transmitted to the EEG, the Manager, and the Governor of the State of New Mexico.

(j) LIMITATION ON ACTIVITY.—Upon notification to the Secretary under subsection (a) that the EEG intends to invoke this section, the Secretary shall not conduct any activity inconsistent with the concern or concerns of the EEG under consideration pursuant to this section unless specifically authorized in writing by the Secretary or agreed to in writing by the Director of the EEG. In the event that the Secretary authorizes any activity pursuant to the provisions of this subsection, the written authorization shall include the basis for such authorization and a copy of it shall be transmitted to the EEG and the Governor of the State of New Mexico at the same time it is transmitted to the Manager. The Secretary may not delegate his authority under this subsection.

(k) IMPLEMENTATION OF DECISION.—The decision of the Secretary under subsection (i) shall be implemented by the Department.

(1) WITHDRAWAL OF MATTER FROM CONSIDERATION.—Nothing in this section shall preclude the withdrawal, at the request of the Director of the EEG, of a matter

from further consideration under this section. If a matter is so withdrawn, the Director of the EEG may not subsequently invoke the provisions of this section with respect to the same matter except with the concurrence of the Secretary.

(m) PUBLIC INPUT.—(1) Subject to the provisions of paragraph (2), nothing in this section shall preclude the Manager of the EEG or the Governor of the State of New Mexico from seeking written public input at the State level which shall be transmitted by the EEG and the Governor to the conflict resolution hearing officer and shall be made part of the record required by subsection (e).

(2) Neither the solicitation of public input under paragraph (1) nor the input itself shall delay the conflict resolution process beyond the time limitations set forth in this section.

(n) NO WAIVER OF ANY RIGHT TO JUDICIAL REVIEW.—Nothing in this section shall be construed to be a waiver by the State of New Mexico of any right to judicial review of any final agency actions of the Secretary or of the Secretary's written authorization to commence any action under subsection (j).

(o) BAR TO JUDICIAL REVIEW.—Notwithstanding any other provisions of law, no court shall have jurisdiction over any action brought by the EEG to review any final agency actions of the Secretary under this section or of the Secretary's written authorization to commence any action under subsection (j).

SEC. 17. REVIEW OF THE WIPP

(a) CONTRACT REQUIREMENT.—The Secretary shall enter into a contract with the New Mexico Institute of Mining and Technology (hereafter in this section referred to as the "Institute") to establish the Environmental Evaluation Group to conduct independent reviews and evaluations of the design, construction, and operations of the WIPP as they relate to the protection of the public health and safety and the environment. The contract shall be for a period of one year beginning on March 31, 1989, and shall be renewable for four additional one-year periods with the consent of the Institute and subject to the appropriation of funds for such purpose.

(b) CONTENT OF CONTRACT.—A contract entered into under this section shall require the following:

(1) The President of the Institute shall appoint a Director and Deputy Director of the EEG, who shall be scientists of national eminence in the field of nuclear waste disposal, shall be free from any biases related to the activities of the WIPP, and shall be widely known for their integrity and scientific expertise. The Director shall supervise the work under the contract and shall report directly to the President of the Institute.

(2) The Director shall appoint staff. The professional staff shall consist of scientists and engineers of recognized integrity and scientific expertise who represent scientific and engineering disciplines needed for a thorough review of the WIPP, including such disciplines as geology, hydrology, health physics, environmental engineering, probabilistic risk analysis, mining engineering, and radiation chemistry. The disciplines represented in the staff shall change as may be necessary to meet changed needs in carrying out the contract for expertise in any certain scientific or engineering discipline. Scientists employed under the contract shall have qualifications and experiences required for scientists employed by the Federal Government in grades GS–13 and GS–16.

(3) Scientists employed under the contract shall have an appropriate support staff.

(4) The Director and Deputy Director shall be appointed for a term of five years, subject to contract renewal, and may be removed only for misconduct or incompetence. The staff shall be appointed for such terms as the Director considers appropriate.

(5) The rates of pay of professional staff and the procedures for increasing the rates of pay of professional staff shall be equivalent to those rates and procedures provided for the General Schedule pay system under chapter 53 of title 5, United States Code. The fringe benefits available to the professional staff of the Institute shall also be available to professional staff of the EEG under the contract.

(6) To the maximum extent practicable, preference in the hiring of staff for the EEG shall be given to persons involved in the scientific evaluation group for the WIPP immediately before the date of the enactment of this Act.

(7) Offices of the EEG shall be established in Carlsbad, New Mexico, and in Alburquerque, New Mexico, for the purposes of carrying out the contract. The Director shall designate one of the offices as the administrative headquarters for carrying out the contract.

(8) The results of reviews and evaluations carried out under the contract shall be published.

(c) ADMINISTRATION.—The contract entered into under this section shall be administered under the direction of the President of the Institute. Such President shall establish the general policies and guidelines to be used by the Director in carrying out the work under the contract. The director shall be solely responsible for determining what reviews and evaluations will be conducted by the EEG.

(d) FUNDING.—Funding for the contract shall be from amounts appropriated. The amount of the initial one-year contract shall be not less than $1,060,000.

(e) EFFECT ON PREVIOUS ACTIONS.—Nothing in this section shall be construed as affecting actions undertaken before the date of the enactment of this section in furtherance of the requirements of this section.

PURPOSE OF THE MEASURE

The purpose of S. 1272 as reported is to withdraw 10,240 acres of land in Eddy County, New Mexico for the exclusive use of the Department of Energy (DOE) for construction, operation, decommissioning, and post-decommissioning control of the Waste Isolation Pilot Plant (WIPP). These lands are currently managed by the Department of the Interior and would be permanently withdrawn and transferred to control by DOE by this legislation.

WIPP is a research and development facility that was established by Public Law 96–164 for the purpose of demonstrating the safe disposal of radioactive waste resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission. S. 1272 would impose additional limitations and conditions on the mission and operation of WIPP.

SUMMARY OF MAJOR PROVISIONS

S. 1272 withdraws the 10,240-acre site surrounding the Waste Isolation Pilot Plant, prohibits further mining at the site, and permanently transfers this land to the Department of Energy for use in fulfilling the mission of the WIPP facility.

The bill directs the Secretary of Energy to develop a management plan for the withdrawn land to protect existing domestic livestock grazing, to allow hunting and trapping, and to preserve the wildlife habitat at the site.

The bill directs the Secretary of Energy to prepare an experimental program plan for WIPP to investigate the rate and impact of brine seepage and gas generation, to demonstrate compliance with the environmental standards for disposal of transuranic radioactive waste, and to test the waste handling and transportation system at the facility.

S. 1272 mandates compliance with standards of the Environmental Protection Agency (EPA) for storatge and disposal of transuranic radioactive waste as set forth in 40 C.F.R. Part 191. EPA's standards are in two parts: Subpart A setting standards for management and storage of waste; and Subpart B setting standards for permanent disposal of waste. Upon enactment of this legislation, DOE would be subject to the standards in Subpart A. Prior to permanent disposal of any radioactive waste at WIPP, the Secretary of Energy is required to demonstrate compliance with Subpart B, and the Administrator of EPA must concur that the standards have been met. Until compliance with the Subpart B standards is dem-

onstrated, the Secretary is directed to conduct an annual demonstration that radioactive waste at the facility can be retrieved.

The bill limits the amount of waste to be used for experiments at WIPP to no more than 3 percent by volume of the capacity of the facility until compliance with the EPA standards for disposal is demonstrated. After compliance with the standards is demonstrated, the amount of waste to be stored at WIPP is limited to no more than 15 percent by volume of the capacity of the facility until October 1, 1993. The billl requires DOE to remove all radioactive waste from WIPP if it fails to comply with the EPA standards by no later than October 1, 1994, unless the Governor of New Mexico and the Department agree that additional time, up to 12 months, is warranted.

S. 1272 establishes by statute the Environmental Evaluation Group (EEG), which is a quasi-state technical oversight group funded through a contract with DOE. The bill provides for the EEG to perform a technical evaluation of the project. The bill also provides for the EEG to review the Department's experimental program plan and the annual retrievability demonstration and establishes a conflict resolution process for resolving any disagreement between the Department and the EEG in these two area. The bill authorizes the EEG to delay actions taken by the Department in these two areas pending the outcome of the conflict resolution process.

S. 1271 authorizes $200 million for construction and upgrading of roads in New Mexico. The bill also authorizes funds for emergency response training and technical assistance.

The bill requires that all packages used to transport radioactive waste to or from WIPP be certified by the Nuclear Regulatory Commission through a process that includes full-scale testing of packages.

The bill establishes a priority system to transport radioactive waste to WIPP from Idaho National Engineering Laboratory, Rocky Flats Plant, and the Savannah River Plant prior to transporting comparable waste from other facilities. The priority system would prohibit shipments from Los Alamos National Laboratory until all other sources of comparable waste have been exhausted.

S. 1272 directs the Secretary of Energy to encourage business and employment opportunities at WIPP that benefit the State of New Mexico and authorize payment of impact assistance and payments equal to taxes to the state and local governments.

S. 1272 directs the Secretary of Interior to pay $10,091,233 annually to the state of New Mexico for five years to offset expenses anticipated to be incurred by the state of New Mexico as a result of the location of WIPP.

BACKGROUND AND NEED

The Waste Isolation Pilot Plant (WIPP) is a research and development facility of the Department of Energy authorized by Public Law 96-164 for the purpose of demonstrating the safe disposal of radioactive waste generated by DOE's nuclear weapons production activities.

The United States has been generating radioactive waste in its national defense programs since the 1940's. Because much of this waste requires isolation from the biosphere for long periods of time, it has been stored retrievably at government sites around the country pending disposal.

Much of this waste is known as transuranic waste (or TRU waste). TRU waste is any solid waste, other than high-level radioactive waste, that is contaminated with nuclides heavier than uranium to the extent that it is not suitable for surface disposal (These nuclides are those with transuranic concentrations of radioactivity greater than 100 nanocuries per gram of waste.). TRU waste exists in a variety of physical forms, ranging from unprocessed general trash such as absorbent papers and protective clothing to decommissioned tools and glove boxes.

Transuranic waste is divided into two categories: contact-handled and remote-handled. Ninety-seven percent of transuranic waste by volume is contact-handled and is stored in plastic bags inside 55-gallon polyethelene lined steel drums. Contact-handled waste emits only alpha radiation, which is dangerous if inhaled or ingested but will not penetrate the skin. Because alpha radiation also cannot penetrate the plastic or the drum, the drums can be handled directly. The remaining 3 percent of transuranic waste by volume is contaminated with fission products—primarily cesium and strontium—and produces radiation that could penetrate metal drums. This transuranic waste is remotely handled and stored and transported in shielded casks.

Prior to 1970, TRU waste was placed in shallow land burial as low-level radioactive waste, and approximately 192,000 cubic meters was disposed of in this fashion. Since 1970, however, transuranic waste has been stored in metal drums or boxes so that it can be easily retrieved and moved to a permanent dispoal facility like WIPP. About 51,000 cubic meters of transuranic waste is currently stored in this manner at 10 DOE sites around the country. These sites are Lawrence Livermore National Laboratory in Livermore, California; Rocky Flats Plant in Golden, Colorado; Idaho National Engineering Laboratory in Idaho Falls, Idaho; Argonne National Laboratory in Argonne, Illinois; Nevada Test Site in Mercury, Nevada; Los Alamos National Laboratory in Los Alamos, New Mexico; Mound Facility in Miamisburg, Ohio; Oak Ridge Reservation in Oak Ridge, Tennessee; Savannah River Plant in Aiken, South Carolina; and Hanford Reservation in Richland, Washington. About 60 percent of all transuranic waste retrievably stored is currently located at Idaho National Engineering Laboratory. In addition, about a quarter of the 192,000 cubic meters of transuranic waste permanently buried in the United States is located at Idaho.

Approximately 5,000 cubic meters of transuranic waste are produced annually. Almost half of this volume—about 2,100 cubic meters—is produced at the Rocky Flats Plant. Since 1970, the Rocky Flats waste has been shipped to the Idaho National Engineering Laboratory for interim storage until such time as it can be transported to WIPP for permanent disposal.

The Atomic Energy Commission, which managed the nuclear weapons program from 1947 through 1974, began looking at salt formations near Carlsbad, New Mexico as potential locations for a

repository for defense waste in 1973. Much of the impetus for initiating a search for locations for a geologic repository in the early 1970s came as a result of persistent objections from the State of Idaho that it was becoming a dumping ground for the nation's defense waste. The AEC focused its efforts on salt beds in New Mexico following an unsuccessful effort in 1972 at a salt mine in Lyons, Kansas. The National Academy of Sciences had recommended in 1957 salt deposits as a preferable geologic media because they are generally located in stable areas with few earthquakes, because salt does not have groundwater movement through it, and because the plastic movement of salt will quickly seal any tunnels, shafts, or cracks.

Site investigations began at the WIPP site in 1975, and funding for research, development, and construction of WIPP was authorized in 1976 in Public Law 94–187. During the late 1970s, the Administration changed the mission of WIPP several times, first to be a facility licensed by the Nuclear Regulatory Commission and to provide for disposal of commercial spent nuclear fuel as well as defense waste and later to be a domonstration facility for defense high-level waste. Ultimately, the facility was authorized in December 1979 in Public Law 96–164 as a research and development facility for defense nuclear waste exempt from regulation by the Nuclear Regulatory Commission.

Public Law 96–164 also directed the Secretary to seek to enter into a written agreement for consultation and cooperation with the State of New Mexico. Under Public Law 96–164, this agreement was required to include the rights of the state to comment on, and make recommendations with regard to, public health and safety aspects of the project prior to certain major decision points ("Key Events" to be defined in the agreement); procedures for the Secretary to receive, comment on, and resolve comments and recommendations made by the state; and procedures for further review and amendment of the agreement. The required Agreement for Consultation and Cooperation between DOE and the State of New Mexico was executed on July 1, 1981. The agreement was subsequently amendmed by the First Modification on November 30, 1984, and by the Second Modification on August 4, 1987. In addition, DOE entered into a Stipulated Agreement with the state on July 1, 1981, in settlement of a lawsuit New Mexico had filed against DOE. A Supplemental Stipulated Agreement was entered into on December 27, 1982; and an Agreement of Principles was entered into on May 10, 1988. These agreements impose detailed limitations and conditions on DOE's operation of WIPP and provide the state with a significant role in WIPP's operation.

The WIPP facility has been under construction since 1981. The facility itself consists of several surface buildings, four access and ventilation shafts extending about 2,150 feet below the surface, an extensive network of waste storage tunnels, and waste storage rooms. The transuranic waste will be stored at WIPP in a 100-acre storage area located near the middle of salt beds that are nearly 2,000 feet thick. Some of the major advantages of the WIPP site are that the salt beds are among the thickest in the nation, the area is uninhabited, and there are no holes for mining or oil drilling penetrating the storage area.

Over $600 million has been spent to date on WIPP, with the total construction cost estimated to be about $700 million. The operating cost for WIPP is estimated at about $78 million annually. The total estimated cost over the 25-year operating life of the facility is in excess of $2.5 billion.

DOE's target date for beginning to receive transuranic waste at WIPP is December 1988 or soon thereafter. DOE's operating plan for WIPP calls for storage of a maximum of 930,000 cubic feet 27,090 cubic meters) of transuranic waste, or about 15 percent of the facility's capacity, for a experimental period of up to five years. During this experimental period, DOE will conduct experiments to determine the rate and impact of brine seepage and gas generation at WIPP, experiments to demonstrate compliance with the environmental standards for disposal of transuranic waste, testing with waste packages to demonstrate handling and transportation operations in the facility, and any other experiments necessary to evaluate the facility's ability to isolate waste from the environment.

Upon completion of this experimental period, DOE will determine whether transuranic waste can be permanently disposed of in WIPP in compliance with EPA's Subpart B standards. If WIPP is found to comply with the standards, DOE will then begin operation of WIPP as a permanent disposal facility.

NEED FOR THE LEGISLATION

Lands owned by the United States and administered by the Bureau of Land Management are open to public use under the mining and public land laws unless legally withdrawn and reserved for a particular public purpose. Under section 204 of the Federal Land Policy and Management Act of 1976, public lands may be withdrawn either by act of Congress or by administrative land withdrawal by the Secretary of the Interior. The Secretary may withdraw parcels of 5,000 or more acres for no more than 20 years at a time. Administrative land withdrawals can be renewed but cannot accomplish a permanent land wihdrawal.

The WIPP site consists of 10,240 acres in Eddy County, New Mexico. These lands consist of sections 15 through 22 and sections 27 through 34 of Township 22 South, Range 31 East, NMPM, in Eddy County. At the time DOE began work at the site 8,960 acres were public land administered by the Bureau of Land Management and the remaining 1,280 acres were owned by the State of New Mexico. Since then, BLM has acquired the entire site and is in the process of acquiring any outstanding oil, gas, and mining leases.

Currently, the land is utilized under an administrative land withdrawal (Public Land Order 6403) issued by the Department of Interior in June 1983. This administrative withdrawal is for a period of eight years; however, it does not authorize use of the lands for transportation, storage, or burial of any radioactive waste at the site.

DOE is seeking a permanent land withdrawal for several reasons. The EPA standards for disposal of radioactive waste require that DOE exercise active institutional control over the disposal site for up to 100 years and passive control thereafter. Since DOE has

statutory responsibility for managing radioactive waste, the agency would like to have permanent jurisdiction and control over the site. In addition, because the period of active use and institutional controls will exceed the normal 20-year period for administrative land withdrawals, DOE believes that a statutory, permanent land withdrawal is desirable.

Public Law 96–164 grants broad authority to DOE to conduct research and development at WIPP independent of regulation by the Nuclear Regulatory Commission. DOE Has agreed to significant limitations on the exercise of that authority and conditions on the operation of WIPP under agreement with the State of New Mexico (Agreement for Consultation and Cooperation and subsequent agreements). Legislation is not necessary to enforce these limitations or conditions. Nonetheless, the Committee believes there is merit in codifying in law many of these limitations and conditions with respect to WIPP.

LEGISLATIVE HISTORY

S. 1272 was introduced on May 21, 1987, by Senators Bingaman and Domenici, and was referred to the Committee on Energy and Natural Resources.

The Subcommittee on Public Lands, National Parks and Forests held a field hearing in Carlsbad, New Mexico on October 12, 1987. Testimony was received from witnesses representing the Department of Energy, the Department of Interior, the Environmental Protection Agency, the National Academy of Sciences, and the State of New Mexico. Testimony was also received from State representatives, local government officials, and environmental groups.

The Committee met in open business session to consider the legislation on August 4 and August 10, 1988.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, by majority vote of a quorum present recommends that the Senate pass S. 1272, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 1 nay as follows:

YEAS	NAYS
Mr. Johnston*	Mr. Metzenbaum*
Mr. Bumpers	
Mr. Ford	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler*	
Mr. Conrad*	
Mr. McClure	
Mr. Hatfield	
Mr. Weicker*	
Mr. Domenici	
Mr. Wallop	

Mr. Murkowski
Mr. Nickles*
Mr. Hecht
Mr. Evans

* Indicates vote by proxy.

COMMITTEE AMENDMENTS

During consideration of S. 1272, the Committee adopted an amendment in the nature of a substitute, a series of technical amendments, and eight amendments to the substitute. The amendments to S. 1272 are described below. Additional details on the provisions of the bill are contained in the Section-by-Section Analysis portion of this report.

1. Amendment in the nature of a substitute

The primary purpose of the bill as introduced was to withdraw the land surrounding the WIPP site and transfer management and control of the land to the Department of Energy. By contrast, the substitute adopted by the Committee expands the scope of the land withdrawal and imposes additional limitations and conditions on the operation of WIPP. The substitute also provides a regulatory role for the Environmental Evaluation Group (EEG), a quasi-state technical review group established by contract with DOE, in overseeing certain aspects of the Department's work at WIPP. The substitute also provides an expanded regulatory role for the Environmental Protection Agency at WIPP, in which the EPA must concur that the Department has complied with the environmental standards for disposal of radioactive waste.

An explanation of the significant new provisions included in the substitute follows.

EEG oversight role

The substitute provides a regulatory and oversight role for the Environmental Evaluation Group (EEG).

The EEG was established in 1978 as an entity of the New Mexico Department of Health and Environment and is funded by a contract with DOE. The group was established to conduct technical evaluations of WIPP and to provide independent scientific counsel to the State of New Mexico and to conduct a monitoring program for radioactivity. EEG became an entity of the New Mexico Institute of Mining and Technology, with funding from DOE, in May 1988. Amendment 8, described below, would establish EEG permanently by statute though still provide for its funding through a contract between DOE and the New Mexico Institute of Mining and Technology.

The substitute would authorize EEG to review DOE's activities at WIPP and would empower EEG under two specific circumstances to prevent DOE from receiving waste at WIPP pending the outcome of a conflict resolution process. The conflict resolution process established by the substitute is similar to that included in the terms of the Agreement for Consultation and Cooperation between DOE and the State of New Mexico whereby any disagreement between the two parties is resolved through a mediation process.

In parallel to the Governor's rights to invoke the conflict resolution process at WIPP, the EEG would also be empowered to invoke conflict resolution under two specific circumstances. In the event that EEG did invoke the conflict resolution process, no waste could be received at WIPP until the process had run its course, except where it is specifically authorized in writing by the Secretary or agreed to in writing by the Director of the EEG. Under the substitute, this process could last up to 90 days.

The first of these circumstances would occur if the EEG disagreed with the adequacy of DOE's experimental program plan for WIPP. The substitute requires DOE to submit an experimental program plan to EEG outlining its plans for investigating the rate and impact of brine seepage and gas generation, for demonstrating compliance with the environmental standards for disposal of transuranic radioactive waste, and for testing the waste handling and transportation system at the facility.

The second circumstance under which EEG could invoke the conflict resolution process would be if it disagreed with DOE's annual determination that waste stored at WIPP can be retrieved. Until the time that compliance with the environmental standards for disposal of transuranic radioactive waste has been demonstrated, the substitute requires DOE to conduct an annual demonstration that the waste at WIPP can be retrieved.

Limitation on volume of waste stored at WIPP

The substitute limits the amount of waste to be used for experiments at WIPP to no more than 3 percent by volume of the capacity of the facility until compliance with the environmental standards for disposal of waste is demonstrated. After compliance with the standards is demonstrated, the amount of waste to be stored at WIPP is limited to no more than 15 percent by volume of the capacity of the facility until October 1, 1993.

The 3 percent volume limitation in the substitute is a new restriction on the operation of WIPP. S. 1272 as introduced would have restricted waste storage at WIPP to 15 percent by volume of the capacity until compliance with the environmental standards is demonstrated.

The purpose of the 3 percent volume limitation is to ensure that uncertainties related to the impact of brine seepage and gas generation phenomena on the performance of WIPP are resolved prior to the time that a significant amount of waste is stored at the facility. Three percent is the amount of waste that is considered necessary to conduct experiments on brine seepage and gas generation.

The brine seepage and gas generation issue amounts to the balance between the rate at which brine will seep into the repository openings in the salt, the rate at which the openings will be closed by the plastic flow of the salt, and the rate at which gas is generated from decaying waste. If the brine seepage rate is slow enough, the plastic creep of the salt can be expected ultimately to immobilize the waste in solid salt. However, if the brine seepage and gas generation are too fast, complete consolidation of the salt will be prevented and fluids would collect in the remaining open spaces of the waste-filled rooms.

Increased attention was focused on the brine seepage and gas generation issue in early 1988 when a group of scientists in New Mexico (the Scientists Review Panel) put forth a theory that brine accumulation in the salt at WIPP could be large enough to result in a radioactive "slurry" of waste and salt inside the salt bed and eventual release of radioactive materials to the environment. These scientists postulate that the brine would saturate the repository before the salt itself moves in to close up the openings.

It has been known for some time that the salt at WIPP contains some water (about 0.5 percent) in the form of brine both within and between the salt crystals. The amount of brine is small, so that the facility is kept dry by normal ventilation procedures and will remain dry as long as the repository is open. After the repository is sealed, however, the brine is expected to accumulate slowly in repository openings. Scientists at Sandia National Laboratories (the technical contractor for DOE) maintain that the amount of brine accumulation is small and that it will be absorbed by the backfill material to be placed in the rooms and tunnels at WIPP. The brine flow then should cease within the next 100 years as the pressure on the salt pushes the walls of the storage rooms together until the rooms disappear and the waste cannisters are embedded in a solid mass of salt.

The brine seepage and gas generation issue was reviewed in February 1988 by the National Academy of Sciences' (NAS) Board on Radioactive Waste Management. Based on its review, NAS believes that the Scientists Review Panel's predictions on brine seepage and theories on environmental releases are "highly improbable." However, NAS did urge DOE to conduct an extensive investigation and experimental program to evaluate the uncertainties on the effect of brine seepage and gas generation. Accordingly, NAS also recommended that DOE limit the amount of waste stored in WIPP to that required for experiments until such time as the uncertainties have been "substantially reduced."

Promulgation of EPA standards/compliance with standards

The substitute includes a requirement that EPA promulgate proposed environmental standards for disposal of transuranic radioactive waste within 18 months of enactment and issue final standards within 3 years of enactment.

Under section 121(a) of the Nuclear Waste Policy Act of 1982, section 161b. of the Atomic Energy Act of 1954, and section 2(a)(6) of Reorganization Plan No. 3 of 1970, EPA is responsible for setting standards for protecting the environment from the escape of radioactive materials from nuclear waste repositories. EPA initially issued these standards in 1985 in two parts: Subpart A setting standards for management and storage of waste; and Subpart B setting standards for permanent disposal of waste. These standards are set forth in 40 C.F.R. Part 191.

Subpart B, the standards for permanent disposal, were struck down on July 17, 1987 by the U.S. Court of Appeals for the First Circuit because EPA had not adequately explained certain aspects of the standards and had not given the public adequate notice and opportunity to comment on certain requirements. EPA is now in the process of revising the subpart B standards. To ensure that the

standards are repromulgated promptly, the substitute sets a deadline for issuance of the draft and final standards for permanent disposal.

The substitute also provides EPA an expanded regulatory role with respect to compliance with the standards at WIPP. The substitute requires EPA to concur that DOE has complied with the standards for disposal at WIPP before the 3 percent volume limitation is lifted. This regulatory role is new for EPA. Under existing provisions of law and existing practice, DOE would self-certify its compliance with the EPA standards. There is currently no regulatory regime at EPA for this purpose.

Ban on high-level radioactive waste experiments at WIPP

The substitute includes a provision prohibiting any experiments at the WIPP facility involving high-level radioactive waste. By contrast, S. 1272 as introduced would have reqired DOE to develop a plan for conducting high-level waste experiments at WIPP and to demonstrate that the benefits of such experiments outweighed the risks. DOE has determined that it does not intend to conduct such experiments at WIPP, hence the substitute prohibits any shipment of high-level waste to the facility. The provision in the substitute revokes the authority contained in Public Law 96–164 to conduct high-level waste experiments at WIPP.

Transportation of waste to WIPP

The substitute contains a number of provisions related to the transportation of transuranic waste to WIPP that were not included in S. 1272 as introduced.

The first of these provisions would authorize appropriation of $200 million for construction and upgrading of roads in New Mexico. The substitute also authorizes funds for emergency response training and technical assistance to be provided to states through whose jurisdiction DOE plans to transport waste to or from WIPP.

The substitute includes a requirement that all transportation packages used for shipments of waste to WIPP be certified by the Nuclear Regulatory Commission. The substitute also requires that DOE abide by applicable NRC regulations for advance notification to states and local governments. These two requirements are essentially the same as the provisions included for transportation of spent fuel and high-level radioactive waste in the Nuclear Waste Policy Amendments Act of 1987 (title V of Public law 100–203, the Omnibus Budget Reconciliation Act of 1987).

Transportation of civilian radioactive waste is regulated jointly by the Department of Transportation under the Hazardous Materials Transportation Act and the Nuclear Regulatory Commission under the Atomic Energy Act of 1954. However, transportation of defense waste (as in the case of WIPP) is exempt from NRC regulation. In the case of WIPP, DOE has already agreed with the State of New Mexico to transport waste to WIPP only in packages certified by NRC. This provision of the substitute, therefore, simply codifies DOE's current intention as it relates to WIPP.

The substitute also establishes a priority system to transport radioactive waste to WIPP that was not included in S. 1272 as intro-

duced. This priority system directs that waste from Idaho National Engineering Laboratory, Rocky Flats Plant, and the Savannah River Plant be transported prior to transporting comparable waste from other facilities. The priority system would prohibit shipments from the Los Alamos National Laboratory to WIPP until all other sources of comparable waste have been exhausted.

2. Amendment to conform existing agreement for consultation and cooperation to the bill

The Committee adopted an amendment to conform the existing Agreement for Consultation and Cooperaton (C&C) between DOE and the State of New Mexico to the provisions of this bill. The intent of the amendment is to address any areas where there is a conflict between the C&C Agreement and the bill and to make it clear that the statute takes precedence over the agreement if there is such a conflict.

The C&C Agreement and the accompanying written agreements between DOE and the state impose detailed limitations and conditions on DOE's operation of WIPP and provide the state with a significant role in WIPP's operation. The provisions of the substitute provide additional rights to the state and to EEG.

The Committee felt that this amendment was necessary to prevent any conflict between the Governor's role under the C&C Agreement and the EEG's role in the substitute. The amendment is not intended, however, to alter in any way the Governor's existing authority under the C&C Agreement to invoke conflict resolution in his review of the experimental program plan or the annual retrievability demonstration.

3. Amendment to direct DOE to consult with the Governor of the State of New Mexico in formulation of experimental program plan

The Committee adopted this amendment to ensure that the Governor of New Mexico is included in the formulation and review of the experimental program plan for WIPP and the proposed plan for the retrievability demonstrations at WIPP. The substitute requires DOE to provide a copy of these two plans to the EEG, the EPA, and the National Academy of Sciences for review.

4. Amendment to require actual full-scale tests on transport packages

This amendment would require full-scale testing on packages used to transport transuranic waste to WIPP in addition to simulated tests and computer analysis of hypothetical accident conditions.

As stated above in the discussion of the amendment in the nature of a substitute, transportation of defense waste is not now subject to regulation by NRC. However, DOE agreed with the State of New Mexico in the Second Modification to the C&C Agreement to transport waste to WIPP only in packages certified by NRC. Existing NRC requirements for certification of transportation packages are to demonstrate that the regulations for isolation of the waste are met. As a matter of practice, NRC leaves it up to the applicant (in the case of WIPP, the applicant is DOE) to determine

whether to demonstrate compliance using computer modelling, actual tests with scale models, full-scale testing, or a combination of all three. According to NRC, the advantages to computer modelling methods are that many more hypothetical accident situations can be demonstrated. In the case of WIPP, DOE's current intention is to conduct both full-scale testing and computer modelling to demonstrate that the TRUPACT package design will isolate the transuranic waste during transportation. In essence, therefore, the amendment codifies DOE's current intention as it relates to WIPP.

5. Amendment to prevent shipments from Rocky Flats Plant to Idaho National Engineering Laboratory after WIPP begins operation

The purpose of this amendment is to provide for direct shipments of waste from Rocky Flats to WIPP, once the facility is operating, without an interim stop at Idaho National Engineering Laboratory. Since 1970, waste has been shipped from Rocky Flats to Idaho for examination, processing as necessary, and storage pending WIPP startup.

As stated above the Background and Need section, there is currently a substantial volume of transuranic waste either stored or disposed of at the Idaho facility. The Committee, therefore, wanted to prevent any unnecessary shipments to Idaho once WIPP is operating and receiving waste for disposal. This amendment, as well as amendment 6 described below, will help to limit the volume of waste at Idaho once WIPP is operational.

6. Amendment limiting shipments of waste to Idaho

This amendment is intended to limit to zero the net annual increase in the amount of waste received from Rocky Flats and stored at Idaho once WIPP is operational. This limitation on waste shipments to Idaho would go into effect after DOE has demonstrated its compliance with the environmental standards for disposal.

7. Amendment to prohibit EEG from withdrawing and resubmitting any concern

The purpose of this amendment is to prevent any abuse of the conflict resolution process in the raising of issues of concern. As drafted in the substitute, the EEG would have been able to withdraw an issue of concern but still invoke the conflict resolution process by resubmitting the same issue at a later point. The amendment simply states that once a matter is withdrawn from consideration, it cannot be resubmitted.

8. Amendment to establish the EEG by Federal contract

This amendment requires the Secretary of Energy to enter into a contract with the New Mexico Institute of Mining and Technology to establish the Environmental Evaluation Group (EEG). The EEG is to consist of a Director and Deputy Director, appointed by the President of the New Mexico Institute of Mining and Technology, and appropriate staff. The mission of the EEG is to conduct independent review and evaluations of the design, construction, and operations of WIPP from the standpoint of protection of the public health and safety and the environment. Funding of the EEG is pro-

vided by a yearly, renewable contract with DOE, and is initially set at $1,060,000.

An extensive discussion of the role of the EEG is included above in the explanation of the amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the bill, the "Waste Isolation Pilot Plant Land Withdrawal of 1988".

Section 2 contains definitions of terms used in the bill.

Section 3 describes the mission of WIPP as a facility to receive, handle, and permanently dispose of defense transuranic waste. The total capacity of WIPP is limited to 6.2 million cubic feet (180,600 cubic meters) by volume of transuranic waste. Waste stored at WIPP during the experimental period prior to permanent disposal must be retrievable. This section also contains a limitation on the total activity level for defense remote-handled transuranic waste shipped to WIPP. This limitation of 5,100,000 curies is also contained in the C&C Agreement between DOE and the State of New Mexico. This section also reiterates that the WIPP facility has not been designed for permanent disposal of high-level radioactive waste and that the WIPP site has not been characterized for such a purpose.

Section 4 states that this bill amends section 213 of Public Law 96-164, the law that authorized the mission of the WIPP facility.

Section 5 establishes that the bill does not preempt the existing Agreement for Consultation and Cooperation between the Department of Energy and the State of New Mexico. The legislation is not intended to conflict with the C&C Agreement. If the C&C Agreement has additional limitations or supplementary requirements not included in the legislation, they do not constitute a conflict. To the extent that the agreement is in conflict with the bill, however, the provisions of the bill will take precedence over the agreement. The provisions of the bill are not intended to take away any of the Governor's authority under the agreement.

Section 6 establishes the location of and jurisdiction over the land withdrawn for WIPP, and revokes existing public land orders governing use of the land.

Subsection (a) withdraws the land described in subsection (c) from operation of the public land laws, including the mining law, mineral leasing laws, and geothermal leasing laws; transfers this land from the Secretary of Interior to the Secretary of Energy; and reserves use of the land for the mission of WIPP.

Subsection (b) revokes previous public land orders governing the use of the land. These orders are Public Land Order 6232, issued March 23, 1982 for the purpose of the WIPP Site and Preliminary Design Validation Program, and Public Land Order 6403, issued June 29, 1983, which withdrew the lands for construction of WIPP.

Subsection (c) defines the boundaries of the land withdrawn by reference to a March 1986 map issued by the Bureau of Land Management and requires the Secretary of Interior to publish this map and legal description of the lands in the Fedeal Register and to file copies of this material with the appropriate committees of Con-

gress. This land consists of approximately 10,240 acres of land in Eddy County, New Mexico.

Subsection (d) provides that the map and legal description of the lands shall have the same force and effect as if they were included in the legislation.

Subsection (e) disclaims any reservation of water rights and directs that water rights must be obtained according to state law.

Section 7 assigns management responsibility for these lands to the Department of Energy and directs DOE to consult and cooperate with the State of New Mexico in carrying out these responsibilities.

Section 7 also directs DOE to develop a management plan for WIPP lands within one year of the date of enactment. In carrying out its management of the withdrawn lands, DOE is directed: to permit grazing to continue where established prior to the withdrawal; to permit hunting and trapping in accordance with state and federal laws and regulations; to preserve the wildlife habitat to the extent possible; and to dispose of excess salt deposits that are extracted from WIPP and not needed for backfill in accordance with existing law. Surface or subsurface mining unrelated to the mission of WIPP shall be prohibited on the withdrawn lands.

However, during Committee deliberation of S. 1272, the Committee was informed that there is an existing Department of the Interior potash lease within the exterior boundary of the Withdrawal. Consequently, because of the ineptitude of the Department of Energy and the Department of the Interior in not informing the Committee of the existence of the lease, as reported the bill may well constitute a legislative taking. If so, this was unintended by the Committee and the sponsors of the bill and an appropriate action including a possible amendment may be required before final enactment.

Section 8 directs DOE to prepare an experimental program plan for WIPP within 90 days of enactment in consultation with the Environmental Protection Agency, the National Academy of Sciences, the Governor of New Mexico, and the Environmental Evaluation Group. The purpose of this experimental program is to outline the Department's plans for experiments at WIPP, including those to determine the rate and impact of brine seepage and gas generation, those to demonstrate compliance with the environmental standards for disposal of waste, and those to test the waste handling and transportation operations.

DOE is required under this section to submit the experimental program plan to EEG for review. Within 60 days, the EEG is required to indicate its agreement or disagreement with the plan. Any disagreement by the EEG must be based on a finding that the activities are not in accordance with the statute or that the activities would pose an undue risk to the public health and safety. If the EEG disagrees with the experimental plan, the conflict resolution procedures of section 16 go into effect and no waste may be received at WIPP until the matter is disposed of according to section 16. This prohibition on waste receipt at WIPP during the pendency of the conflict resolution process could be lifted, however, if authorized in writing by the Secretary of Energy or agreed to in writing by the Director of the EEG.

Section 9 establishes the role of the EEG in reviewing DOE's operations at WIPP. DOE is directed to provide to EEG all relevant data, reports, and other material concerning the experimental program plan. The EEG also is authorized to review and comment on any other activities at WIPP that affect the public health and safety.

Section 9 also directs DOE to provide data to the Governor of New Mexico and the National Academy of Sciences for technical review.

Section 10 states that the Secretary of Energy shall be subject to the environmental standards for management and storage of radioactive waste (40 CFR Part 191, Subpart A) as of the date of enactment. The Secretary is directed to comply with the environmental standards for disposal of waste prior to the permanent disposal of any radioactive waste at WIPP. Prior to permanent disposal, the Administrator of EPA must concur that the environmental standards for disposal have been met.

The Secretary is required to conduct an annual demonstration that the radioactive waste stored at WIPP can be retrieved until such time as the Administrator of EPA concurs that DOE has complied with the environmental standards for permanent disposal. At least 90 days before each such annual demonstration, the Secretary is required to submit a plan for the demonstration to the EEG. The Secretary is also required to provide to EEG a plan showing the location of all radioactive waste stored in WIPP and describing a feasible procedure for removal of that waste, if necessary, in a reasonable period of time. Upon request by EEG, the Secretary shall remove a sample package of waste to physically demonstrate its retrievability. Following the annual demonstration of retrievability, the EEG is required to notify the Secretary within 60 days of any disagreement that the demonstration has met the requirements of the statute. In the event that the EEG disagrees, the conflict resolution procedures of section 16 go into effect and no waste may be received at WIPP until the matter is disposed of according to section 16. This prohibition on waste receipt at WIPP during the pendency of the conflict resolution process could be lifted, however, if authorized in writing by the Secretary of Energy or agreed to in writing by the Director of the EEG.

Subsection (c) limits the amount of waste to be received at WIPP to only as much waste as is necessary for waste experiments, and in no case more than 3 percent by volume of the capacity of the facility, until compliance with the environmental standards for disposal of waste is demonstrated. After compliance with the environmental standards is demonstrated, the amount of waste to be received at WIPP is limited to no more than 15 percent by volume of the capacity of the facility until October 1, 1993.

Subsection (d) requires that, if EPA finds that the environmental standards for disposal of waste have not been complied with by October 1, 1993, the Secretary must notify the Congress within 30 days and physically remove the waste as soon as possible. As soon as the waste is removed, the site must be decommissioned and the land would then be transferred back to the Bureau of Land Management. The trigger date for this termination of the WIPP project could be delayed until October 1, 1994 if the Secretary notifies the

appropriate committees of Congress that an additional year is necessary to demonstrate compliance. This trigger date could be further extended for up to one additional year if agreed to by both the Secretary and the Governor of New Mexico.

Subsection (e) requires that both engineered and natural barriers be used to isolate waste at WIPP to the extent required by the EPA.

Section 11 directs EPA to promulgate new proposed standards for the permanent disposal of radioactive waste within 18 months of enactment and to issue final standards within three years of enactment. Such new standards will replace the standards that went into effect on November 19, 1985 but were remanded to EPA by the U.S. Court of Appeals for the First Circuit on July 17, 1987. DOE is directed under section 10 to comply with the EPA's new standards for permanent disposal of radioactive waste once they are issued in final form. In the event that the new standards are again remanded by a court of law, DOE is directed by this section to comply with these new standards unless the court specifically finds that there are substantive health and safety flaws in such standards that are directly applicable to WIPP. In the event that EPA fails to promulgate or issue the new standards by the deadlines contained in this section, DOE is directed to demonstrate compliance with the old EPA standards as they were in effect on November 19, 1985.

Subsection (d) directs EPA to assert primary authority over compliance with the Resource Conservation and Recovery Act at WIPP until the State of New Mexico is authorized to regulate mixed waste at WIPP.

Section 12 prohibits any high-level radioactive waste experiments at WIPP. This section would revoke the authority of the Secretary to conduct such experiments under Section 213 of Public Law 96–164. Section 213 of Public Law 96–164, and the accompanying conference report (Report 96–702), set forth the mission of WIPP to include temporary storage and experiments on defense high-level radioactive waste. DOE's program plans for WIPP have until recently included experiments on a limited quantity of defense high-level waste. DOE, however, recently determined that it did not intend to conduct high-level waste experiments at WIPP.

Section 13 contains several provisions related to the transportation of transuranic waste to and from the WIPP facility.

Subsection (a) authorizes $200 million for construction or upgrading of highways in the State of New Mexico.

Subsection (b) authorizes funding to the Secretary to provide in-kind and cash assistance for emergency response-related activities to the State of New Mexico or any other state or Indian tribe through whose jurisdiction waste will be shipped to or from WIPP. Such assistance is for the purpose of training of state and local officials. The Secretary is also authorized to provide funding to states and local governments to ensure that necessary emergency response equipment is available.

Subsection (c) requires all radioactive waste shipped to or from WIPP to be transported in packages certified by the Nuclear Regulatory Commission. In certifying such packages for transportation of waste to WIPP, NRC is directed to require actual testing on a sample full-scale package.

Subsection (d) requires DOE to abide by all applicable regulations of the Nuclear Regulatory Commission regarding advance notification of state and local governments prior to transporting any radioactive waste to WIPP.

Subsection (e) establishes a priority system for shipments of waste to WIPP.

Subsection (f) establishes a limitation on the volume of waste to be received from the Rocky Flats Plant for storage at the Idaho National Engineering Laboratory once WIPP is operating and receiving waste for disposal.

Section 14 provides for economic assistance to the State of New Mexico in the form of business and employment opportunities, annual payments, impact assistance, and payments in lieu of taxes.

Subsection (b) requires the Secretary of Interior to pay $10,091,233 annually for each of five years to the State of New Mexico from the United States' share of revenues received under section 35 of the Minerals Lands Leasing Act. The purpose of these payments is to offset expenses anticipated to be incurred by the state as a result of the location of WIPP in New Mexico. The payments would be in addition to any payment that the state would normally receive under the Mineral Lands Leasing Act.

Subsection (c) authorizes the Secretary to provide impact assistance to the State of New Mexico.

Subsection (d) authorizes the Secretary to provide to the State of New Mexico and local governments payments in lieu of taxes.

Section 15 requires the Secretary to prepare a plan for environmental management of the WIPP lands after decommissioning and a plan for management and use of the WIPP lands after decommissioning. Both plans must be completed within 5 years after the date of enactment.

Section 16 provides a 90-day conflict resolution procedure to resolve disagreements between DOE and the EEG. The conflict resolution process under this section would be used in the case of a disagreement over the experimental program plan required under section 8 or the annual retrievability demonstration required under section 10. When EEG and DOE disagree, they must first meet to attempt to resolve their differences. If those discussions do not yield agreement to the satisfaction of both parties, EEG must notify DOE in writing of its intent to invoke the conflict resolution process, and a conflict resolution hearing officer is then appointed. The hearing officer may take oral testimony and must receive written statements from DOE, the EEG, and the Governor. The hearing officer then issues a written recommendation to DOE, the EEG, and the Governor. The Secretary of Energy then reviews the written recommendations, as well as any information submitted by the parties, and issues a written decision. The Secretary's decision must include the basis for such decision and constitutes final agency action on and resolution of the matter.

During the pendency of the conflict resolution process, the Secretary shall not conduct any activity inconsistent with the concern or concerns raised by the EEG unless specifically authorized in writing by the Secretary or agreed to in writing by the Director of the EEG.

The intent of subsection (n) is to ensure that the State of New Mexico is not deprived of any right to judicial review of final agency actions of the Secretary of Energy.

Subsection (o) would bar judicial review by the EEG of any final agency action taken by the Secretary of Energy under this section or of the Secretary's written authorization to commence any action under subsection (j). The purpose of this provision is to ensure that the decision by the Secretary resulting from the conflict resolution process is binding on the EEG. Neither subsection (n) nor subsection (o) is intended to affect in any way the standing of any third parties in judicial determinations on the issues raised by the conflict resolution process.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached revised cost estimate for S. 1272, the Waste Isolation Pilot Plant Land Withdrawal Act of 1988. This estimate supersedes our previous estimate dated September 9, 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM, *Acting Director.*

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: S. 1272.

2. Bill title: Waste Isolation Pilot Plant Land Withdrawal Act of 1988.

3. Bill status: As amended and ordered reported by the Senate Committee on Energy and Natural Resources on August 10, 1988.

4. Bill purpose: S. 1272 would transfer land surrounding the Department of Energy's (DOE) waste isolation pilot plant (WIPP) from the Department of the Interior (DOI) to DOE. The bill would also direct DOE to make specific changes in the WIPP program concerning compliance with Environmental Protection Agency (EPA) standards for waste disposal, transportation of waste, and payments and benefits to New Mexico.

This bill would permanently designate approximately 10,00 acres of federally owned land near Carlsbad, New Mexico for use by DOE. This land is currently administered by DOI and, under this bill, would be used by DOE to operate the WIPP. The WIPP is a radioactive waste disposal test facility, and possible permanent geologic disposal site, for radioactive transuranic waste resulting from the production of nuclear weapons.

S. 1272 would establish the disposal capacity of the WIPP as 250,000 cubic feet and would prohibit the shipment of any high level radioactive waste to the WIPP.

The bill directs EPA to issue regulations for the disposal of transuranic waste within 18 months of enactment, and to finalize these regulations within 3 years. Under S. 1272, DOE would be allowed to place up to 7,500 cubic feet of waste (3 percent of capacity) in the facility before EPA has certified that the WIPP meets its waste disposal standards. If EPA certifies that its standards are met, DOE may proceed to fill the WIPP to its capacity; however, until October 1, 1993, only 15 percent of the facility's capacity can be used. If EPA has not certified WIPP by October 1, 1993, the bill allows for two possible one-year extensions of testing. DOE must remove all waste in the facility if the WIPP cannot meet EPA's waste disposal regulations.

Section 13 of the bill authorizes the appropriation of $200 million in 1989 for the construction and upgrading of highways in New Mexico for the transportation of transuranic waste. DOE is also directed to provide in-kind, cash, and technical assistance for the training and equipping of public safety personnel in emergency response activities to any state or Indian tribe located along planned transportation routes.

S. 1272 directs the Secretary of the Interior to pay New Mexico $10.1 million in 1989, and the same amount annually, adjusted for inflation, for 1990 through 1993 from the federal share of mineral leasing receipts. In addition, DOE would be required to provide New Mexico with financial and technical assistance to mitigate and monitor the economic, social, and environmental impacts arising from the WIPP. DOE would also be required to make payments in lieu of taxation to New Mexico and affected units of local governments resulting from development and operation of the WIPP.

Section 17 of the bill reestablishes the scientific evaluation group for the WIPP established in 1978 as the Environmental Evaluation Group. DOE is directed to fund this group, at least at the current level, for an additional five years. The bill also specifies that this group is to review various DOE reports and planning documents related to WIPP operations. The bill establishes a conflict resolution process in the event that the environmental evaluation group disapproves a plan, demonstration, or WIPP report issued by DOE.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Requiring appropriation action:					
Estimated authorization level	208	3	4	4	4
Estimated outlays	8	43	64	52	28
Direct spending:					
Estimated budget authority	10	10	11	11	12
Estimated outlays	10	10	11	11	12

The costs of S. 1272 would be higher than shown in the above table, because CBO cannot estimate the amount of mitigation pay-

ments to New Mexico that would be necessary if this bill becomes law.

The costs of this bill fall within budget functions 050 and 800.

Basis of estimate: This estimate assumes the amounts authorized in the bill for highways ($200 million) and preparation of an impact mitigation report ($5 million) will be appropriated and spent at the historical rate for similar activities. In addition, based on information from DOE, CBO estimates that about $3 million annually could be required to conduct the emergency preparedness activities called for in this bill, and about $0.3 million annually for DOE to make payments equivalent to state and local taxes. The annual payments to New Mexico ($10.1 million in 1989 and slightly larger amounts in 1990 through 1993) would be paid from the federal share of mineral leasing receipts and would not require appropriation action.

The schedule and conditions specified in S. 1272 for shipping waste to the WIPP are similar to DOE's current plans for conducting testing at the facility. The provisions of the bill are not expected to significantly delay DOE's plans for testing the WIPP.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On August 8, 1988, the Congressional Budget Office prepared a cost estimate for H.R. 2504, a similar bill ordered reported by the House Committee on Interior and Insular Affairs on July 13, 1988. The estimated cost of S. 1272 is greater than that of the House bill because H.R. 2504 would prohibit DOE from shipping any waste to the WIPP until it complies with EPA disposal regulations. Based on information from DOE, we estimate this prohibition on waste shipments would decrease DOE's planned expenditures over the 1989–1993 period by about $80 million.

On September 9, 1988, CBO prepared a cost estimate for S. 1272. This estimate supersedes the previous one, which has been corrected to show that the annual payment to New Mexico from the federal share of mineral leasing receipts does not require appropriation action.

9. Estimate prepared by: Kim Cawley.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1272.

This bill is not a regulatory measure in the sense of imposing federally-established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 1272.

EXECUTIVE COMMUNICATIONS

The pertinent reports and communications received by the Committee from the Department of Energy and the Department of Interior setting forth executive agency recommendation relating to S. 1272 are set forth below.

DEPARTMENT OF ENERGY
Washington, DC, August 9, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Your committee is currently considering S. 1272, the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act of 1988. I am writing to express my support for the efforts by Senator Bingaman and Senator Domenici to obtain legislation which would allow WIPP to start the demonstration phase in a reasonable and safe manner. This project is an important element of the Department's national security program, and legislative land withdrawal is the preferred option for assuring long term continuity in the project. I want to provide you with the Department's views on two important issues in this legislation.

The proposed legislation limits the amount of waste which can be stored prior to demonstrating compliance with Environmental Protection Agency (EPA) standards for the disposal of transuranic waste to 3 percent of the total capacity of WIPP. This limitation would adversely affect the Department's ability to complete the demonstration phase of the project. The purpose of the demonstration phase is not only to demonstrate that the facility will meet applicable environmental standards, but also to demonstrate the safe disposal of radioactive waste at near full-scale operation receipt rates. It is essential that the Department retain the authority to emplace the necessary amount of waste in WIPP to accomplish both of these objectives. Such a limit on waste receipts would, in my view, compromise a vital element of the project mission to demonstrate the safe disposal of radioactive waste, as authorized in Public Law 96–164.

An amendment proposed by Senator McClure would also maintain strict limits on the amount of waste received at WIPP, but provide the Department with additional flexibility in order to successfully complete the demonstration phase. It would limit waste at WIPP to a maximum of 3 percent of capacity until the uncertainty regarding brine seepage and gas generation has been reduced and the National Academy of Sciences has concurred that these phenomena will not affect WIPP performance. If these criteria are met, the amendment limits WIPP to a maximum of 9 percent of capacity until the Administrator the EPA concurs that DOE has complied with environmental standards for disposal of transuranic waste. While the Department continues to believe that the limit of fifteen percent of WIPP capacity is preferable, this amendment would allow the program to proceed.

The second issue is the role of the Environmental Evaluation Group (EEG) in the decision-making process. In Public Law 96–164, Congress established the Federal government as the ultimate au-

thority in WIPP operations. The Consultation and Cooperation agreement between the Federal government and the State of New Mexico affirmed this authority, but provided the state with its proper and essential role in assuring that the health and safety of its citizens are protected.

I welcome the independent review function of the EEG. The Department of Energy and the EEG have worked successfully together with the EEG acting in a consultative and advisory capacity on technical issues. The draft bill, however, upsets the careful balance between Federal and state authority. Under the provisions of draft S. 1272, the EEG would function without clear and direct accountability either to the state government or to any entity of the Federal government.

As you know, the Administration has very serious objections to other provisions in this legislation, especially the proposed "Offset of Expenses" in section 14(b). I am hopeful that your leadership will result in practical and workable legislation that will best serve the Nation.

The Office of Management and Budget advises that, from the standpoint of the President's program, it has no objection to the submission of this report.

Sincerely,

N.A. DUVAL
(For Troy E. Wade II, Acting Assistant Secretary for Defense Programs).

THE SECRETARY OF THE INTERIOR,
Washington, DC, August 9, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On August 4, the Senate Committee on Energy and Natural Resources began the markup of S. 1272, legislation that would permanently withdraw lands for the Waste Isolation Pilot Plant (WIPP) in New Mexico. As you know and as the Department has testified, I strongly support a permanent Congressional withdrawal of these lands for WIPP. However, as you continue the markup, you should be aware that there is one provision in this bill which is so objectionable that, if it is enacted, I would be forced to recommend that the President veto the WIPP legislation.

Section 2(b) of the bill would require the Secretary of the Interior to pay to the State of New Mexico over $10 million annually for five years for the purported loss of mineral royalties as a result of the WIPP withdrawal. The money would come from the United States portion of the revenues received under section 35 of the Mineral Leasing Act. The annual payments would be in addition to the money that the State receives under section 35; that is, 50 percent of all money received from the development of minerals in New Mexico under the Mineral Leasing Act.

I strongly object to compensating the State of New Mexico for "foregone" mineral revenues that it might have received under the Mineral Leasing Act. This provision would set an onerous precedent. It could be applied to any situation where lands are with-

drawn or conveyed to another Federal agency for management for a specific purpose that excludes mineral development. Linking such payment to illusory mineral receipts under the Mineral Leasing Act could be viewed as establishing that the State is entitled to share receipts even without establishing the exact nature, economic value, and commercial quantity of the minerals, if any, involved.

In this particular case, the existence of oil and gas in producible quantities at the WIPP site is totally speculative. At today's market values and development costs it is unlikely that the resources would be considered attractive enough to be developed at this time—or in the foreseeable future. The only study to date on minerals at the WIPP site estimated the State share of oil and gas royalty at less than $5 million.

Moreover, the distribution formula for revenues obtained from the leasing of Federal minerals dose not grant the States an interest in the minerals themselves. There is, therefore, absolutely no obligation to lease federally owned minerals. Likewise, there is no obligation to compensate for failure to lease. If a contrary notion were to be applied in such cases, it would be devastating to the Federal budget.

Assuming Congress decides to make an incentive payment to New Mexico for accepting the placement of WIPP in New Mexico, an idea I do not address, the payment should come from the agency receiving the lands. It certainly should not be tied to alleged foregone mineral receipts.

Again, I urge enactment of legislation withdrawing the WIPP site and support your efforts to do so. However, I will not support any legislation that contains a provision requiring payment to the State of New Mexico for the loss of mineral royalties as a result of the WIPP withdrawal.

Sincerely,

DONALD PAUL HODEL, *Secretary.*

STATEMENT OF LARRY L. WOODARD, STATE DIRECTOR, NEW MEXICO STATE OFFICE, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear before the Subcommittee today to discuss the views of the Department of the Interior on S. 1272. We support the enactment of S. 1272, if amended in a manner that I will discuss later in my statement.

Section 2 of the bill would withdraw approximately 10,240 acres of land in Eddy County, New Mexico, from all forms of entry, appropriation, and disposal under the public land laws, and from location, entry, and patent under the mining laws, the mineral leasing laws, and the geothermal leasing laws. These lands would be known as the Waste Isolation Pilot Plant (WIPP), and they would be reserved for the construction, operation, repair and maintenance, shutdown, monitoring, post-decommissioning control, and other authorized activities associated with the mission of WIPP. Jurisdiction over the WIPP site would be transferred from the Secretary of the Interior to the Secretary of Energy. This section would also require the Secretary of the Interior to pay the State of New Mexico over $10 million for fiscal year 1988 and each of the four

subsequent fiscal years as "compensation for mineral royalties lost" because of the withdrawal of lands for WIPP. This would be in addition to any payment to the State of New Mexico under section 35 of the Mineral Lands Leasing Act.

Section 3 would authorize the Secretary of Energy to acquire non-Federal lands and interests in land within the boundaries of WIPP through exchange, purchase, donation, or other means. The Secretary of the Interior would be authorized to exchange public lands for private or State lands within the boundaries of WIPP upon the request of the Secretary of Energy. The lands that the Secretary of the Interior would receive in the exchange would be immediately transferred to the Secretary of Energy and managed as part of WIPP.

Section 4 would require the Secretary of Energy, in consultation with the State of New Mexico, to develop a management plan for the lands and surface resources withdrawn and reserved for WIPP. The management plan would be required to provide for grazing, hunting and trapping, wildlife habitat, the disposal of salt tailings remaining on the surface, and mining. Section 4 would also require the Secretary of Energy, in consultation with the State of New Mexico, to develop an economic impact plan which would include estimates of the social or economic impact of the WIPP project on community services in affected counties of southern New Mexico.

Section 5 would require the Secretary of Energy, in consultation with the State of New Mexico, to submit a plan for environmental controls for the WIPP facility after decommissioning, as well as a management plan for the lands after decommissioning.

Before the Secretary of Energy could conduct any high level waste experiments or receive any high level wastes at WIPP, he would be required by section 6 to publish a detailed report describing his plans to conduct such experiments for dissemination to the State of New Mexico, appropriate congressional committees and the public.

Section 7 would require the Secretary of Energy to comply with the Environmental Standards of the Environmental Protection Agency for the Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Wastes. Engineered and natural barriers would be required at the WIPP facility to isolate the radioactive waste.

The Department of the Interior has consistently advocated a permanent congressional withdrawal of the WIPP site before transuranic nuclear wastes are stored in the facility. The Bureau of Land Management (BLM) has been involved with the WIPP proposal since 1973 when some initial site studies were authorized by a cooperative agreement. In 1976, the first withdrawal application was filed for 17,200 acres of public land. In 1980, an environmental impact statement was completed and a modified withdrawal application filed on 8,960 acres to protect the four square miles surrounding the proposed facility.

In March 1982, an 8-year administrative withdrawal—Public Land Order (PLO) 6232—was filed on the 8,960 acres to allow for finalization of the Site Preliminary Design Validation. When this validation was completed in 1983, another 8-year administrative withdrawal (PLO 6403) was granted to permit full construction of

the facility. This latest withdrawal action by the Secretary of the Interior applied to the 8,960 acres of public land, and also provided that it would encompass 1,280 acres of State land if these lands were acquired by the United States.

We have worked closely with the Department of Energy for over a decade to get to the point where we are today. The Department of Energy has cleared the oil and gas leases on the public lands and the potash leases on State sections. BLM is fully cognizant of the national security implications of the WIPP program. Based upon our analysis of the geologic and environmental issues surrounding the site itself, we are satisfied with the studies and conclusions reached by the Department of Energy as to the use of these public lands as a transuranic nuclear waste pilot project.

One significant action that must still be accomplished to complete the WIPP withdrawal is the BLM/State of New Mexico land exchange. This exchange involves the acquisition of 1,280 acres of State Trust properties for 2,519.43 acres of public lands. The public lands selected by the State are partially encumbered by Federal potash leases held by the New Mexico Potash Company. In order for the exchange to proceed, New Mexico Potash Company will be required to relinquish its Federal leases and take State leases in their place concurrent with the exchange. We understand that negotiations between the Department of Energy and New Mexico Potash Company are almost complete and that the proposal is under review by the Department of Justice. When that review is completed, the exchange between BLM and the State Land Office can be completed in a few weeks. If the exchange can be completed before S. 1272 is enacted, section 3 of the bill could be deleted.

We have the following concerns about S. 1272:

1. We strongly oppose section 2(b) of S. 1272. This provision would require the Secretary of the Interior to pay to the State of New Mexico $10,091,233 annually for 5 years beginning in FY 1988 adjusted each subsequent year by the Consumer Price Index, for the loss of mineral royalties as a result of the WIPP withdrawal. Such compensation would be taken from the United States portion of the revenues received under section 35 of the Mineral Lands Leasing Act. The annual payments would be in addition to the monies that the State receives under section 35—that is—50 percent of all monies received from sales, bonuses, royalties and rentals of public lands within the State.

We oppose this provision. Payments to New Mexico under S. 1272 would have to be taken from funds that would otherwise be distributed to the General Treasury Fund and the Reclamation Fund. The United States Claims Court in Case No. 526-85T, State of New Mexico vs. United States of America, December 30, 1986, found that the State compensation is not required in situations such as this. The Solicitor of the Department of the Interior, in Opinion M-36929, December 30, 1980, reached the same conclusion. S. 1272 implies that the State has an inherent right to these monies, while in fact this award is at the discretion of the Federal Government. If enacted, this provision would set an onerous precedent for other withdrawal actions.

2. Section (2)(c)(1) of S. 1272 states that the withdrawal would comprise approximately 10,240 acres of public land in Eddy

County, New Mexico, and any lands which may be acquired with the boundaries of such lands under section 3. The existing withdrawal by the Department of Energy consists of 8,960 acres of public land and surrounds 1,280 acres of State land—two school land sections. While the total acreage that is encompassed in the Waste Isolation Pilot Plant is correct, it is incorrect to include State lands in the acreage designated as "public land". The bill should be amended to reflect that there are 8,960 acres of public lands currently within the boundaries of WIPP. Of course, if the exchange with the State is consummated before enactment of this bill, those lands would become public lands.

3. Section 2(c)(2) of S. 1272 would require the Secretary of the Interior to publish a Federal Register notice to describe the withdrawn lands and to file maps and the legal description with the appropriate congressional committees, the State of New Mexico, and the Secretary of Energy. We question the necessity of filing a description of the project in the Federal Register in any event. Because the land would be under the jurisdiction of the Secretary of Energy, we recommend that he handle this responsibility, with the Secretary of the Interior to receive a filing.

We likewise recommend that section 2(d) be amended to require that technical corrections to maps and legal descriptions be made by the Secretary of Energy.

4. Section 3(b)(2) of S. 1272 would provide that lands acquired by exchange by the Secretary of the Interior under that section for addition to WIPP would not become public lands and would be transferred immediately to the Secretary of Energy. We recommend that the language be amended to provide that the lands automatically upon vesting of title in the United States shall be reserved and become a part of the reservation established by the bill. This would eliminate the unnecessary step of transferring jurisdiction from the Department of the Interior to the Department of Energy.

5. S. 1272 would withdraw the WIPP lands from the mining, mineral leasing and geothermal leasing law. We do not believe it is necessary to withdraw the lands from the mineral leasing or geothermal leasing laws because it may be possible to allow those activities without interference with the purposes and functions of WIPP. We suggest that S. 1272 be amended to withdraw the lands from the mining laws but not from the mineral leasing or geothermal leasing laws.

This completes my statement. I will be pleased to answer any questions.

STATEMENT OF TROY WADE, ACTING ASSISTANT SECRETARY FOR DEFENSE PROGRAMS

The Department of Energy strongly supports legislation to withdraw permanently the WIPP site from the public land laws and to transfer control over the site to the Secretary of Energy. We are pleased to be asked to provide testimony on S. 1272, a bill that would accomplish such a withdrawal. First, I would like to brief the subcommittee on the status of the project.

The Waste Isolation Pilot Plant (WIPP), authorized by Public Law 96-164, is a defense activity of DOE to provide an under-

ground research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission (NRC).

Since the early 1940's, the United States has been generating radioactive waste in national defense programs through the production of nuclear weapons and the operation of military reactors. Because much of this waste is hazardous enough to require isolation from the biosphere, it has been stored at Government sites around the country. DOE is responsible for developing and implementing methods for the safe and environmentally acceptable disposal of this waste.

Much of this waste is known as transuranic (TRU) waste. TRU waste is any solid waste, other than high level waste or spent nuclear fuel, that is contaminated with nuclides heavier than uranium to such an extent that it is not suitable for surface disposal. TRU waste exists in a variety of physical forms, ranging from unprocessed general trash such as absorbent papers and protective clothing to decommissioned tools and glove boxes.

WIPP is the result of many years of work in exploring long-term solutions for the management of radioactive waste generated by our nation's defense activities. The facility will conduct valuable research and development to demonstrate not only the behavior of radioactive waste in a geologic repository but also the handling, certification, and transportation aspects of waste disposal.

Both contact-handled TRU waste, which requires no shielding, and remote-handled TRU waste, which requires shielding to protect the workers who handle it, will be shipped to WIPP.

The TRU waste will be sorted at WIPP in a 100-acre storage area at a depth of 2150 feet beneath the surface in a deep bedded salt formation.

In addition, this area will contain the underground support facilities and the experimental area. The WIPP surface facilities accommodate the personnel, equipment, and support services required for the receipt, preparation, and transfer of waste from the surface to the underground. The surface facilities are located on an area of approximately 35 acres.

This land are is a square—four sections by four sections in size, totalling sixteen square miles. The inner four sections of land constitute the outer boundaries of excavation for the underground development. The outer twelve sections provide an approximate one-mile subsurface natural barrier for a WIPP disposal system. This buffer zone is an integral part of the disposal system.

WIPP has been under construction since 1981. The facility will be ready to begin receiving contact-handled TRU waste in October 1988. Remote-handled waste could begin arriving by January 1989. The TRU waste place in WIPP will be stored in a retriebable manner for approximately five years until a decision can be made regarding permanent disposal of the waste.

In addition to receiving TRU waste, experiments will be conducted at WIPP on defense high level waste. All of the high level waste placed in WIPP will be removed upon completion of the experiments and brought to the cilivan RW repository.

Section 8 of S. 1272 sets forth the limits on the surface dose rate and the curies per liter maximum activity level of the remote handled waste, as well as the amount of high level waste which will come to WIPP. These limits accurately reflect DOE's plans.

Phases of WIPP

WIPP is a phased project. The Final Environmental Impact Statement for the project was issued in October 1980 with the record of decision to proceed with the project being issued in January 1981. Shortly thereafter, in April 1981, surface activity began at the site for the Site and Preliminary Design Validation (SPDV) phase of the project. Extensive surface-based geologic and hydrologic studies had been made at the WIPP site since 1973. The SPDV phase of the project provided valuable, detailed knowledge of the subsurface conditions.

Two shafts were drilled during the SPDV phase. Four underground rooms were excavated to storage-room dimesions and about 9000 feet of connecting and exploratory drifts were excavated. During this phase the site was more fully characterized for its intended purpose and the major design elements for the project were validated through measurement and observation.

Upon completion of the SPDV phase, DOE concluded that construction of the WIPP could proceed in a safe and environmentally acceptable manner. As the Department indicated at the time and I will repeat today, the WIPP site has not been characterized for the disposal of high level waste.

Land use

I understand that State Bureau of Land Management Director, Larry Woodard, will provide the history and background on our use of the public land.

The site consists of 8,960 acres of public land owned by the United States and 1,280 acres—two sections—of State land. An exchange of the State-owned land for Federal land elsewhere in the State is near completion.

During the early stages of the project we utilized the land under cooperative agreements with the Department of the Interior (DOI).

Currently, the land is utilized under an administrative withdrawal issued by DOI in June 1983. That administrative withdrawal does not authorize use of the withdrawn lands for transportation, storage, or burial of any radioactive materials except for the use of radiological instruments normally used for nondestructive testing and geophysical logging. The land restriction currently in effect does not allow the receipt of wastes and our understanding that BLM will not allow waste storage until the land is legislatively transferred to this Department.

We seek permanent land withdrawal legislation for several reasons. Environmental Protection Agency (EPA) standards require that DOE exercise active institutional control over the disposal site for up to 100 years and passive control afterwards. A major components of DOE's institutional control program will be its ability to regulate resource recovery and other uses of the withdrawal area. DOE is the agency with the statutory responsibility for managing

radioactive wastes and the technical expertise to do so. For these reasons DOE, rather than BLM, should be the agency that has jurisdiction and control over the WIPP site.

Furthermore, it is obvious that the 20-year period for administrative withdrawals under the Federal Land Policy and Management Act of 1976 will be insufficient. Accordingly, permanent control over the site should be transferred legislatively to DOE and the site should be withdrawn from operation of the public land laws.

Relationship with the State of New Mexico

DOE is pleased to have developed a fine working relationship with the State of New Mexico on the WIPP Project. The framework for our relationship is the consultation and cooperation process required by Public Law 96–164. DOE will provide technical reports, documents, and information of all types for State review and comment. Our interactions with the State include a broad range of continous communication between DOE and various State groups, including the Environmental Evaluation Group (EEG), the Radioactive Waste Consultation Task Force (Task Force), and the Radioactive and Hazardous Materials Committee of the State Legislature.

We strive to provide all available information to the State and public to facilitate an independent assessment of the safety of WIPP activities. Our consultation and cooperation process includes responding to the State's comments and attempting to resolve any concerns the State may have about issues that might affect the health and safety of its citizens. As an example of the State's involvement with WIPP, our interactions with the EEG alone has included 22 day-long Quarterly Reviews, many separate technical reviews, and responses to approximately 275 letters from EEG.

Current status

The WIPP Project is currently: On schedule, within budget, and In conference with technical and institutional baselines.

The baseline construction (initial construction projects), managed by the U.S. Army Corps of Engineers (USACE), was completed in FY–87. The Management and Operating Contractor (MOC) is now conducting systems operation tests. Additional construction or modifications which were identified during operational reviews, such as a ventilation shaft, Emergency Services Building, and Construction and Salt Handling hoist upgrade will be managed by the MOC.

The total project cost for WIPP is $699.6 million. This cost is in "year of expenditure" dollars through project completion. It includes capital equipment and operating costs for design, procurement, construction project management, technical support, contact handled TRU waste transportation fleet procurement, and related R&D and geotechnical investigations. Our objective is to begin operations in the first quarter of FY–89.

Research and Development Program

WIPP includes an underground area for conducting experiments at elevated temperature, initially utilized electric heaters to simu-

late defense high-level waste, and later with small volumes of actual radioactive wastes. These experiments will examine issues of generic interest to defense waste isolation, as well as address issues which must be resolved to support isolation of TRU wastes at WIPP. Sandia National Laboratories is conducting scientific research to address issues related to disposal of defense waste in salt by modeling various scenarios to evaluate compliance with the EPA standard 40 CFR 191, and by conducting those tests necessary to provide confidence in the repository performance. Completion of the studies identified in this program will satisfy the State of New Mexico's requests for more detailed geologic and hydrologic data and for consideration of repository sealing methods.

WIPP will comply with all applicable regulations including the Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High Level, and Transuranic Wastes, 40 CFR 191, issued by the Environmental Protection Agency. WIPP will be in compliance with Subpart A of those standards when this legislation is passed this land is transferred with authorization to receive waste. Under an agreement reached this summer with the State of New Mexico, we will demonstrate compliance with Subpart B of those standards prior to receiving more than 15 percent by volume of the TRU waste facility capability. That same requirement is stated in S. 1272.

At the time we reached agreement with the State, we were aware that the First Circuit Court of Appeals had vacated the EPA standards to the agency for reconsideration. For that reason we stated our intent, while the standards were under reconsideration, to continue our performance assessment planning as though the provisions of the standards promulgated by EPA on September 18, 1985, were still in effect.

Performance assessment activities will carry out those studies necessary to address compliance with Sections 191.13, 191.15, and 191.16 of 40 CFR 191. Further areas of study will help to: (1) develop the potential breach scenarios for WIPP and their probability of occurrence; (2) develop a representative radioactivity level for the waste; (3) construct models for the contribution of engineered barriers to contain radioactivity; and (4) model the transport of radionuclides to the accessible environment, model the 1000-year anticipated repository behavior, and model the projected dose to man.

Waste transportation

A contract has been awarded to Nuclear Packaging, Inc., to design and fabricate six units of transportation containers. These cylindrical-shaped TRUPACT-II containers will be used to ship contact-handled TRU waste from ten DOE facilities to WIPP. Nuclear Packaging, Inc., will design, test, obtain a certificate of compliance from NRC, and deliver the first unit for operational use by October 1988. Fabrication and assembly of the rest of the fleet, following initial delivery of six containers, will be done at the TRUPACT Assembly Facility in Carlsbad by Carlsbad-based Gregory Enterprises, Inc., working under a subcontract to Nuclear Packaging. An estimated 25 new jobs will be created in Carlsbad during the fabrication and assembly of approximately 50 TRUPACT-II containers.

A contract has also been placed with Nuclear Packaging Inc. for two remote handled TRU waste casks and trailers. The casks will be certified by the NRC and delivery is scheduled for May 1989.

Operational readiness review

WIPP is preparing to enter its operation phase. Plans are being developed to assure maximum safety and reliability of all aspects of facility operations. Employee training and emergency action plan development are examples of activities currently being performed.

A formal Operational Readiness Review (ORR) will ensure that all systems are in place and functioning prior to start-up. To date, the ORR process has identified over 13,000 key events and/or analyses that require closer scrutiny prior to operation. The results of these analyses will enable management to prioritize design, construction, and operation changes to optimize reliability and maintain risk at an acceptable level.

Environmental protection

A Radiological Baseline Program, which establishes radiological levels existing prior to bringing waste to WIPP, was initiated in July 1985. This program will continue until operations begin. Operational radiological monitoring will begin six months before the start of operations. An ecological monitoring program is in place to monitor the non-radiological impacts of WIPP on the environment.

Safety at WIPP

A comprehensive industrial safety program is in place for worker protection. This program includes extensive safety training for underground employees. Also, during construction, particular attention is paid to the quality of workmanship, through a quality assurance program, to ensure that critical components are built properly and will operate as planned.

To protect both WIPP employees and residents of Carlsbad, WIPP safety personnel have developed and practiced effective strategies for dealing with potential emergency situations, for example, tornadoes, floods, and fires. WIPP is equipped with fire trucks for both the surface facilities and underground and has an underground ambulance. On a regular basis, the WIPP emergency team conducts drills with neighboring organizations, such as surrounding fire departments.

Special preparations have been made to organize waste transport to the WIPP facility. Both normal transport and accident conditions have been evaluated. Our evaluations indicate that the radiological risk of transporting TRU wastes is small.

Employment

During peak construction periods, employment at WIPP exceeded 650 people; when operational, WIPP will employ over 450 people. WIPP is the second largest employer in Carlsbad. All openings for permanent jobs are advertised in newspapers in the sur-

rounding communities; approximately 60 percent of WIPP employees are from the local work force.

Procurement

As a DOE project, WIPP must comply with Federal regulations which ensure competition, fair prices to the Government, and the selection of qualified bidders. The WIPP Project has in place programs that assure compliance with regulations and yet maximize business opportunities for local suppliers and economically disadvantaged firms.

S. 1272

A few specific comments about S. 1272 are appropriate. Section 2(b) would make available to the State of New Mexico approximately $50 million over five years to make up for "mineral royalties lost." We support the Department of the Interior in its opposition to this provision. In addition, this bill contains many details about the WIPP project and management of the land which are adequately covered in other documents, such as our comprehensive Consultation and Cooperation Agreement with the State of New Mexico. Although we would prefer that land withdrawal legislation not include many of the details which we believe can best be handled through administrative management, these provisions would not adversely affect the WIPP project.

We do have several techncial amendments to the bill and I or my staff will be happy to work with the Committee to discuss these matters.

Conclusion

The WIPP construction effort is nearly complete; site validation will permit a high level of confidence in the suitability of the site; the transportation system will be available when needed; and an Operational Readiness Review System is in place to assure that WIPP will be ready to receive waste. We strongly support land withdrawal legislation as necessary to ensure the orderly implementation of the WIPP Project.

DEPARTMENT OF ENERGY,
Washington, DC, October 5, 1987.

Hon. RAY A. BARNHART,
Administrator, Federal Highway Administration
Washington, DC.

DEAR MR. BARNHART: The State of New Mexico has supported and cooperated with the Department of Energy (DOE) in its efforts to construct and operate the Waste Isolation Pilot Plant (WIPP) for many years. As a direct result of that support and cooperation, the United States is moving forward with the Nation's first facility to demonstrate the safe disposal of radioactive waste arising from national defense programs. The WIPP is scheduled to begin operations in late calendar year 1988.

Certain highways in New Mexico have been designated as transportation routes for waste destined for WIPP. The State has identi-

fied the necessity for the construction of new roads in New Mexico, along the designated WIPP transportation routes, to provide relief routes away from frequently traveled existing highways and provide bypasses around congested urban areas. The New Mexico State Highway Deparetment has proposed the following new roads as WIPP-related relief routes and bypasses:

1. Hobbs Relief Route
2. Los Alamos/Santa Fe Relief Route
3. Roswell Relief Route
4. Santa Fe Bypass
5. Artesia Relief Route
6. Carlsbad Bypass

The DOE recognizes and appreciates the support that the State of New Mexico has provided toward the achievement of this significant national goal and understands the State's need for improved highways. Therefore, the DOE supports and requests that the Department of Transportation act favorably upon requests by the State of New Mexico for up to $190 million for the construction of these needed roads. The State recognizes that such funding may be approved over a period of time and is determining the relative priority for each project.

I look forward to further cooperation between our agencies, and I will be pleased to provide information, from DOE's perspective, which supports the State's request for highway funds.

Sincerely,

TROY E. WADE II,
Acting Assistant Secretary for Defense Programs.

MINORITY VIEWS OF MR. METZENBAUM

On August 10, 1988, the Senate Energy and Natural Resources Committee reported the "Waste Isolation Pilot Plant Land Withdrawal Act of 1988" (S. 1272). I voted against S. 1272 because I do not believe it assures an adequate level of protection for citizens in waste generator states, along WIPP shipping routes or in the vicinity of the WIPP repository.

The Department of Energy (DOE) and its predecessor agencies have been generating defense transuranic wastes for over forty years in the course of developing, producing, testing and maintaining nuclear weapons. A small portion of these wastes are generated in my state at the Mound facility in Miamisburg, Ohio. There is no question but that safe disposal of these nuclear by-products is long overdue and, in 1979, Congress authorized the WIPP facility for this purpose (P.L. 96-164).

S. 1272, the WIPP Land Withdrawal Act, would grant Congressional approval to DOE to begin WIPP operations. While I have no quarrel with the concept of geologic disposal of wastes at WIPP, I believe it is reckless and irresponsible for Congress to grant DOE the authority to begin loading waste into WIPP without knowing whether or not the facility is safe.

A means of assessing the long-term safety of the WIPP repository exists in standards now being promulgated by the Enironmental Protection Agency (40 CFR 191). These standards set numerical limits on human exposure to radiation and long-term releases of radioactive material to the environment from repositories. The fact is, that compliance with EPA standards is the only independent means of assessing whether or not WIPP is a safe and environmentally sound facility and no one—not DOE, not EPA—knows whether WIPP can comply.

I voted against S. 1272 because it would allow DOE to waive its obligation to comply with EPA standards and load up to three percent of facility capacity—close to 26,000 drums!—into WIPP for "experimental" purposes. Yet, according to the National Academy of Sciences and the State of New Mexico's Environmental Evaluation Group, DOE has never justified the need to place radioactive waste in WIPP for experiments to show compliance with EPA standards.

Under the approach provided for in S. 1272, if it is ultimately determined that WIPP cannot meet EPA requirements (not a remote possibility given recent reports of brine seepage into the site), 26,000 drums of waste will have to be retrieved and shipped back to where it came from. That means states which lie along WIPP shipping routes will get a double round of shipments through them and we, as a nation, will be no closer to the goal of permanent waste disposal.

Clearly, it is important to states like Ohio which produce a portion of the transuranic wastes, to know in advance that these wastes are being disposed of properly. I believe it is important as a matter of national policy, as well. To quote from recent General Accounting Office testimony before the House: ". . . until the final

EPA repository standards are in place and DOE determines that WIPP meets those standards, enactment of legislation for permanent land withdrawal is premature." I agree, and I, therefore, cannot support legislation, such as S. 1272, which would allow DOE to load wastes into WIPP before knowing whether the facility can comply with EPA safety standards.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1272, as ordered reported, are shown as follows.

While there are no actual changes in the text of existing law made by this bill, S. 1272, as ordered reported, would revoke specific authority established by Public Law 96-164. Section 12(b) of S. 1272 revokes the authority of the Secretary of Energy to conduct high-level radioactive waste experiments at the Waste Isolation Pilot Plant established pursuant to section 213 of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980.

The text of section 213 of Public Law 96-164 is printed below.

WASTE ISOLATION PILOT PLANT, DELAWARE BASIN, NEW MEXICO

SEC. 213. (a) The Secretary of Energy shall proceed with the Waste Isolation Pilot Plant construction project authorized to be carried out in the Delaware Basin of southeast New Mexico (project 77-13-f) in accordance with the authorization for such project as modified by this section. Notwithstanding any other provision of law, the Waste Isolation Pilot Plant is authorized as a defense activity of the Department of Energy, administered by the Assistant Secretary of Energy for Defense Programs, for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States exempted from regulation by the Nuclear Regulatory Commission.

(b)(1) In carrying out such project, the Secretary shall consult and cooperate with the appropriate officials of the State of New Mexico, with respect to the public health and safety concerns of such State in regard to such project and shall, consistent with the purposes of subsection (a), give consideration to such concerns and cooperate with such officials in resolving such concerns. The consultation and cooperation required by this paragraph shall be carried out as provided in paragraph (2).

(2) The Secretary shall seek to enter into a written agreement with the appropriate officials of the State of New Mexico, as provided by the laws of the State of New Mexico, not later than September 30, 1980, setting forth the procedures under which the consultation and cooperation required by paragraph (1) shall be carried out. Such procedure shall include as a minimum—

(A) the right of the State of New Mexico to comment on, and make recommendations with regard to, the public health and

safety aspects of such project before the occurrence of certain key events identified in the agreement;

(B) procedures, including specific time frames, for the Secretary to receive, consider, resolve, and act upon comments and recommendations made by the State of New Mexico; and

(C) procedures for the Secretary and the appropriate officials of the State of New Mexico to periodically review, amend, or modify the agreement.

(3) As soon as practicable after the date on which the agreement referred to in paragraph (2) is entered into by the Secretary and the appropriate officials of the State of New Mexico, but not more than 15 days after such date, the Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives copies of such agreement, and a period of 45 days shall elapse while Congress is in session before such agreement becomes effective unless the Committees on Armed Services of the Senate and the House of Representatives, in writing, waive any portion of such 45-day period. The Secretary shall promptly notify such committees of any amendment or modification made to such agreement under paragraph (2)(C).

(c) No law enacted after the date of the enactment of this Act shall be held, considered, or construed as amendment, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section.

Approved December 29, 1979.

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